United States Court of Appeals

for the Second Circuit

APPENDIX

74-1351

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO: 74-1351

IN THE MATTER OF

JACK ROBINSON,

BANKRUPT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK AT BANKRUPTCY NO. 71-376

APPENDIX

SAPERSTON, WILTSE, DAY & WILSON
Attorneys for Appellant, Jack Robinson

(Donald P. Sheldon, Esq.
and
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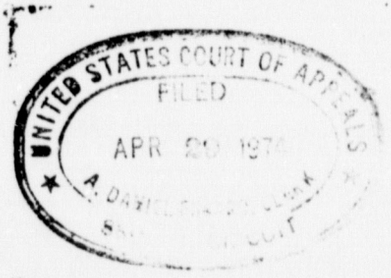

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UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF

JACK ROBINSON,

BANKRUPT

Bankruptcy No. 71-376

DOCKET ENTRIES

Date	Proceedings
1971	
March 3	Petition filed in District Court
March 4	Received Petition, Schedules and Statement of Affairs 4/7/71 - Set for first meeting 6/8/71 - Last Day to file objection to discharge 10/7/71 - Last Day to file claim
April 7	First Meeting held - Lester H. Block, Trustee - Bond $10.
June 8	Objections to Discharge filed
October 21	Entered order granting discharge
October 29	Entered order vacating discharge

-/-

1973

January 3	Referee's Decision & Order - Discharge denied
January 5	Petition and Order for Reconsideration filed (Order of January 3, 1973)
March 6	Referee's Decision and Order of January 3, 1973 sustained
March 14	Petition for Review filed
March 20	Certificate on Petition for Review filed District Court

1974

January 16	Copy of Decision and Order - John T. Curtin, U. S. District Judge
February 14	Received copy of Notice of Appeal - Saperston, Wiltse, Day & Wilson

Statement of Affairs (Official Form No. 3)
For Bankrupt or Debtor Engaged in Business 1519 David F. Williamson Co., Publishers 43 Niagara St., Buffalo, N. Y.—W-5

STATEMENT OF AFFAIRS

(Note: Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the bankrupt or debtor is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.)

1. **Nature, location and name of business.**
   a. What business are you engaged in? (If business operations have been terminated, give the date of such termination.)
   Canned meat broker
   b. Where, and under what name, do you carry on such business?
   Jack Robinson, 34 Carpenter Avenue, Buffalo, New York 14223
   c. When did you commence such business?
   1953.
   d. Where else, and under what other names, have you carried on business within the six years immediately preceding the filing of the original petition herein? (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)
   None.

2. **Books and records.**
   a. By whom, or under whose supervision, have your books of account and records been kept during the two years immediately preceding the filing of the original petition herein? (Give names, addresses, and periods of time.)
   Jack Robinson, 34 Carpenter Avenue, Buffalo, New York 14223
   b. By whom have your books of account and records been audited during the two years immediately preceding the filing of the original petition herein? (Give names, addresses, and dates of audits.)
   No one.
   c. In whose possession are your books of account and records? (Give names and addresses.)
   Jack Robinson, 34 Carpenter Avenue, Buffalo, New York 14223

3. **Financial statements.**
   a. Have you issued any financial statements within the two years immediately preceding the filing of the original petition herein? (Give dates, and the names and addresses of the persons to whom issued, including mercantile and trade agencies).
   Yes - Manufacturers & Traders Trust Co. - 4/69 & 4/70
   Liberty National Bank & Trust Company - 1969

4. **Inventories.**
   a. When was the last inventory of your property taken?
   None taken.
   b. By whom, or under whose supervision, was this inventory taken?
   N/A
   c. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)
   N/A
   d. When was the next prior inventory of your property taken?
   None taken.
   e. By whom, or under whose supervision, was this inventory taken?
   N/A
   f. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)
   N/A
   g. In whose possession are the records of the two inventories above referred to? (Give names and addresses.)
   N/A

5. **Income other than from operation of business.**
   a. What amount of income, other than from the operation of your business, have you received during each of the two years immediately preceding the filing of the original petition herein? (Give particulars, including each source, and the amount received therefrom.)
   None.

6. **Income tax returns.**
   a. Where did you file your last federal and state income tax returns, and for what years?
   Buffalo, New York - 1969

7. **Bank accounts and safe deposit boxes.**
   a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)
   Manufacturers & Traders Trust Company - Delaware-Chippewa Office
   Liberty National Bank & Trust Company
   Bank of Buffalo
   b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.)
   Manufacturers & Traders Trust Company - Delaware-Chippewa Office
   In names of Jack Robinson and Sonja Robinson.

8. **Property held in trust.**
   a. What property do you hold in trust for any other person. (Give name and address of each person, and a description of the property and the amount or value thereof.)

   Trust Accounts - Jack Robinson, as Trustee for Salome Robinson, Gene Robinson, and Elizabeth Robinson (children of Petitioner) - total in 3 trust accounts is $75.00.

9. **Prior bankruptcy or other proceedings; assignments for benefit of creditors.**
   a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein? (Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.

   None.

   b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee? (If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.)

   No.

   c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? (If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.

   No.

10. **Loans repaid.**
   a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein? (Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship. If the bankrupt or debtor is a partnership, state whether the lender is or was a partner or a relative of a partner, and, if so, the relationship. If the bankrupt or debtor is a corporation, state whether the lender is or was an officer, director or stockholder, or a relative of an officer, director or stockholder, and, if so, the relationship.)

   Regular payments on account on obligations listed in Schedule A herein.

11. **Transfer of property.**
   a. What property have you transferred or disposed of, other than in the ordinary course of business, during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

   1970 Gremlin auto. transferred to wife, Sonja Robinson, on 2/25/71; consideration was assumption of installment obligation for financing of said auto. to Marine Midland Bank-Western and fact that said wife had made all prior installment payments for said auto. from her own income.

12. **Accounts receivable.**
   a. Have you assigned any of your accounts receivable during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of assignees.)

   No.

13. **Losses.**
   a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the petition herein? (If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

   No.

   (If the bankrupt or debtor is a partnership or corporation the following additional questions should be answered.)

14. **Withdrawals.**
   a. What personal withdrawals, including loans, have been made by each member of the partnership, or by each officer, director or managing executive of the corporation, during the year immediately preceding the filing of the original petition herein? (Give the name of each person, whether a partner, officer, director or manager, the dates and amounts of withdrawals, and the nature or purpose thereof.)

   None.

15. **Members of partnership; officers, directors, managers, and principal stockholders of corporation.**
   a. What are the names and addresses of each member of the partnership, or the names, titles and addresses of each officer, director and managing executive, and of each stockholder holding 25 per cent. or more of the issued and outstanding stock, of the corporation?

   N/A

Jack Robinson
Bankrupt (or Debtor)

STATE OF **New York**
COUNTY OF **Erie** } ss.

I, **JACK ROBINSON**, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

Subscribed and sworn to before me this **3rd** day of **March,** 19**71.**

Jack Robinson
Bankrupt (or Debtor)

(Official Character)

DONALD P. SHELDON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19 72

DEBTOR'S PETITION

In the District Court of the United States for the **Western** District of **New York.**

IN THE MATTER OF

JACK ROBINSON,

S.S. 349-26-0662 Bankrupt

In Bankruptcy

No.

PETITION

To the Hon. **JOHN O. HENDERSON,** Judge of the District Court

of the United States for the **Western** District of **New York**

The Petition of **JACK ROBINSON** (Full name—not initials) **-- S.S. 349-26-0662,**

residing at **34 Carpenter Avenue,** in the **Town of Tonawanda,**

county of **Erie.** State of **New York,**

by occupation a **salesman,**

and [redacted] **self-employed as a canned meat broker,**

Respectfully Represents: 1. Your petitioner has had **his** principal place of business, (or has resided at) (or has **his** domicile) within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district;

2. Your petitioner owes debts and is willing to surrender all **his** property for the benefit of **his** creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to Bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all **his** debts, and, so far as it is possible to ascertain, the names and places of residence of **his** creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all **his** property, real and personal, and such further statements concerning said property as are required by the provisions of said Act:

Wherefore your Petitioner Prays; That **he** may be adjudged by the Court to be a bankrupt within the purview of said Act.

Jack Robinson
PETITIONER.

Donald P. Sheldon
DONALD P. SHELDON - ATTORNEY.

State of **New York** }
County of **Erie** } ss.

I, **JACK ROBINSON,** , the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Jack Robinson
Petitioner

Subscribed and sworn to before me this **3rd** day of **March,** A. D., 19**71.**

Donald P. Sheldon
DONALD P. SHELDON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19 72 Official Character

All the schedules must be filed in triplicate with this Petition.

Oaths required by this Act, except upon hearing before a Judge, may be administered by referees, officers authorized to administer oaths in proceedings before the Courts of the United States or under the laws of the State where the same are to be taken, and by diplomatic or consular officers of the United States in any foreign country.

Petitioner's attorney cannot act as notary.

Schedule A (1) Statement of all Debts of Bankrupt or Debtor

Statement of all creditors to whom priority is secured by the act

CLAIMS WHICH HAVE PRIORITY	Insert in all cases, reference to ledger or voucher; names of creditors and their residence, if known, or if unknown, so state; when and where debt was incurred or contracted; whether claim is contingent, unliquidated or disputed; nature and consideration of the debt, and whether incurred or contracted as partner or joint contractor, and if so, with whom.	AMOUNT $	Cts.
A. Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding $600.00 each, earned within three months before filing the petition.	NONE.	00	00
B. Taxes due and owing to—			
(1) The United States.	NONE.	00	00
(2) The State of N.Y.	NONE.	00	00
(3) The county, district or municipality of County of Erie State of N.Y.	Real Property Tax - 1971 and returned School Tax.	1,559	40
C. (1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority.	NONE.	00	00
(2) Rent owing to a landlord who is entitled to priority by the laws of the State of ——— accrued within three months before filing the petition, for actual use and occupancy.	NONE.	00	00
	TOTAL	1,559	40

Judith I Robertson Petitioner

Statement of all Debts of Bankrupt or Debtor

Schedule A (2) CREDITORS HOLDING SECURITIES

(N. B.—Particulars of Securities held, with dates of same, and when they were given, to be stated under the names of the several Creditors, and also particulars concerning each Debt, as required by the Act of Congress relating to Bankruptcy, whether contracted as partner or joint contractor with any other person; and if so, with whom.)

Insert in all cases, reference to ledger or voucher; names of creditors and their residence, if known, or if unknown, so state, description of securities, when and where debts were contracted and nature and consideration thereof; whether claim is contingent, unliquidated or disputed.	Value of Securities $	Cts.	Amount due or claimed $	Cts.
Marine Midland Trust Company of Western New York, 241 Main Street, Buffalo, New York 14203 - purchase money bond and mortgage - premises: 34 Carpenter Avenue, Town of Tonawanda, New York; dated and recorded on October 14, 1963.			21,800	00
East Buffalo Credit Union, 345 Tacoma Avenue, Buffalo, New York 14216 - collateral mortgage - premises: 34 Carpenter Avenue, Town of Tonawanda, New York; dated March 24, 1969, recorded March 25, 1969.			7,493	00
Manufacturers & Traders Trust Company, P. O. Box 767-8, Buffalo, New York 14240 - security interest in inventory, accounts receivable, and contract rights; financing statement filed, Erie County Clerk's Office, on December 19, 1969.			35,226	04
Manufacturers & Traders Trust Company, P. O. Box 767-8, Buffalo, New York 14240 - security interest in inventory, accounts receivable, and 1969 Pontiac station wagon; financing statement filed, Erie County Clerk's Office, on January 27, 1969.			unknown	
First Warsawer Club Federal Credit Union, 534 Kenmore Avenue, Buffalo, New York 14216 - security interest in 1969 Pontiac station wagon; financing statement filed, Erie County Clerk's Office, on October 29, 1970.			4,620	00
Beneficial Finance Co. of New York, Inc., 5547 Main Street, Williamsville, New York 14221 - security interest in 1969 Pontiac station wagon; financing statement filed, Erie County Clerk's Office, on December 4, 1970.			1,800	00
	TOTAL		70,939	04

Jack Babirm
Petitioner

David F. Williamson Co., Publishers 43 Niagara St., Buffalo, N. Y.—O-5

Statement of all Debts of Bankrupt or Debtor

Schedule A (3) CREDITORS WHOSE CLAIMS ARE UNSECURED

N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.

Insert in all cases, reference to ledger or voucher; names of creditors and their residence, if known, or if unknown, so state, when and where debt was contracted; whether claim is contingent, unliquidated or disputed; nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as partner or joint contractor, or with any other person; and if so, with whom.	AMOUNT DUE OR CLAIMED $	Cts.
American Oil Company, 165 North Canal Street, Chicago, Illinois 60606 - merchandise	204	10
Mobil Oil Company, P. O. Box 600, Kansas City, Missouri 64141 - merchandise	64	72
Texaco, Inc., P. O. Box 2000, Bel-Air, Texas 77401 - merchandise	234	96
Sheridan Motors, Sheridan Drive, Amherst, New York 14226 - services	120	48
American Express Cards Division, P. O. Box 1934, New York, New York 10008	591	55
American Airlines, P. O. Box 521, New Hyde Park, New York 11040	58	00
Dr. Virgil Boeck, 1275 Delaware Avenue, Buffalo, New York 14209 - services	150	00
Dr. W. Weimer, D.D.S., 4098 Bailey Avenue, Buffalo, New York 14226 - services	368	00
Mr. Merwin Adler, 749 Delaware Road, Kenmore, New York 14223 - services	60	00
Dr. Bertram A. Portin, 2900 Main Street, Buffalo, New York 14214 - services	30	00
Dr. Philip Wels, 1275 Delaware Avenue, Buffalo, New York 14209 - services	15	00
Dr. Max Weiner, 1645 Hertel Avenue, Buffalo, New York 14216 - services	24	00
Northtown Pharmacy, 3091 Sheridan Drive, Amherst, New York 14226 - merchandise	74	34
Fox & Staniland, 702 Main Street, Buffalo, New York 14202 - merchandise	75	03
Alfred L. Marks, 3053 Sheridan Drive, Amherst, New York 14226	30	00
Connell Gas Heating Service, 103 Lincoln Avenue, North Tonawanda, New York 14120	153	26
Naab & Mohring, 2362 Genesee Street, Cheektowaga, New York 14225	41	92
(CONTINUED)		
TOTAL		

Petitioner

SCHEDULE A (3) - Continued

Automobile Club of Western New York, 976 Delaware Avenue, Buffalo, New York 14240	$ 35.00
Sealtest All-Star Diaries, 1730 Dale Road, Cheektowaga, New York 14225 - merchandise	78.41
Adam, Meldrum, & Anderson Co., Inc., 389 Main Street, Buffalo, New York 14203 - merchandise	48.27
L. L. Berger Co., Inc., 514 Main Street, Buffalo, New York 14202 - merchandise	23.55
The Kleinhan's Company, Main and Clinton Streets, Buffalo, New York 14203 - merchandise	47.45
W. T. Grant Co., 546 Main Street, Buffalo, New York 14202 - merchandise	34.01
The William Hengerer Company, 465 Main Street, Buffalo, New York 14203 - merchandise	31.22
Temple Shaarey Zedek, Hartford and Gatsville Roads, Williamsville, New York 14221	150.00
Taylor Travel Service, Inc., 3959 Main Street, Buffalo, New York 14214 - judgment entered, City Court of Buffalo - 1/15/71 Ross & Stein, attorneys, 302 Ellicott Square Building, Buffalo, New York 14203	293.53
Manufacturers & Traders Trust Company, Empire Card, 1100 Wehrle Drive, Williamsville, New York 14221	941.70
Manufacturers & Traders Trust Company, Delaware Avenue Office, 236 Delaware Avenue, Buffalo, New York 14202	137.50
Liberty National Bank and Trust Company, Installment Loan Department, 424 Main Street, Buffalo, New York 14240	2,136.00
Liberty National Bank and Trust Company, Master Charge, 424 Main Street, Buffalo, New York 14240	986.55
Marine Midland Banks-Western, Master Charge, 241 Main Street, Buffalo, New York 14203	717.06
Marine Midland Banks-Western, Custom Credit, 241 Main Street, Buffalo, New York 14203	4,831.83
Marine Midland Banks-Western, Midland Time Plan, 241 Main Street, Buffalo, New York 14203	1,510.00
Hebrew Benevolent Loan Association, 787 Delaware Avenue, Buffalo, New York 14209	650.00

(CONTINUED)

Petitioner

SCHEDULE A (3) - Continued

Hickman, Coward & Wattles, Inc., 125 Gardenville Parkway West, Buffalo, New York 14224	$ 4,986.00
Frank Wardynski & Sons, Inc., 336 Peckham Street, Buffalo, New York 14206	12,878.56
Max M. Yellen, 328 Woodbridge Avenue, Buffalo, New York 14214 - co-signer on East Buffalo Credit Union obligation	
Isador Lansky, 116 Deerhurst Park Boulevard, Kenmore, New York 14217 - co-signer on First Warsawer Club Federal Credit Union obligation	
Melvin Siegel, 240 Hunters Lane, Williamsville, New York 14221 - co-signer on First Warsawer Club Federal Credit Union obligation	
Joseph Palanker, 60 Fairmount Avenue, Kenmore, New York 14223 - co-signer on Hebrew Benevolent Loan Association obligation	
Isaac Klein, 40 Hardt Lane, Amherst, New York 14226 - co-signer on Hebrew Benevolent Loan Association obligation	
Melvin Mesnekoff, 147 Ranch Trail West, Williamsville, New York 14221 - co-signer on Hebrew Benevolent Loan Association obligation	
Leon Rubin, 17 Varick Street, New York, New York 10013 co-signer on Hickman, Coward & Wattles, Inc. obligation	
E. T. Clauss and Company, 735 Delaware Avenue, P. O. Box 534, Buffalo, New York 14240	289.51
The Glassman of Western Nwe York, 703 Woodland Drive, Kenmore, New York 14223	43.61
TOTAL	$33,145.12

Petitioner

Statement of all Debts of Bankrupt or Debtor

Schedule A (4) Liabilities on Notes or Bills Discounted, which ought to be paid by the drawers, makers, acceptors or indorsers

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.)

Insert in all cases, reference to ledger or voucher, names of holders as far as known, if unknown, so state; their residence, if known, if unknown, so state; place where debt was contracted; whether claim is disputed; nature and consideration of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom. Give street and number address where possible.	AMOUNT DUE OR CLAIMED $	Cts.
NONE.	00	00
TOTAL	00	00

Petitioner

David F. Williamson Co., Publishers
43 Niagara St., Buffalo, N. Y.—O-5

Statement of all Debts of Bankrupt or Debtor

Schedule A (5) ACCOMMODATION PAPER

N. B.—The dates of the notes or bills, when due, with the names and residences of the drawers, makers, acceptors and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.

Insert in all cases, reference to ledger or voucher, names of holders, residence, if known, if unknown so state; names and residences of persons accommodated; place where contracted; whether claim is disputed; whether liability was contracted as partner or joint contractor, or with any other person, and if so, with whom.	AMOUNT DUE OR CLAIMED $	Cts.
East Buffalo Credit Union, 345 Tacoma Avenue, Buffalo, New York 14216 - as co-maker on promissory note wherein wife, Sonja Robinson, is maker.	3,996	50
TOTAL	3,996	50

Jack Robinson Petitioner

STATE OF New York
COUNTY OF Erie } ss.

OATH TO SCHEDULE A

I, JACK ROBINSON, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Jack Robinson Petitioner

Subscribed and sworn to before me this 3rd day of March, 19 71.

Edward P. Sheldon
Notary Public State of New York
Qualified in Erie County
My commission expires March 30, 1972

(Official Character)

Statement of all Property of Bankrupt or Debtor

Schedule B (1) REAL ESTATE

Insert in all cases, location and description of all real estate owned by debtor, or held by him, whether under deed, lease or contract; incumbrances thereon, if any, and dates thereof, statement of particulars relating thereto.	Estimated Value of Debtor's Interest $	Cts.
One-family house at 34 Carpenter Avenue, Town of Tonawanda, County of Erie, and State of New York, owned by Bankrupt and wife, Sonja Robinson, as tenants by the entirety.		
Subject to unpaid taxes, mortgages, as set forth in Schedule A-2.	500	00
TOTAL	500	00

Petitioner

David F. Williamson Co., Publishers
43 Niagara St., Buffalo, N. Y.—O-2

Statement of all Property of Bankrupt or Debtor

Schedule B (2) PERSONAL PROPERTY

		AMOUNT $	Cts.
A. Cash on hand.	NONE.	00	00
B. Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately.)	NONE.	00	00
C. Stock in trade in ..... business of ..... at ..... of the value of	NONE.	00	00
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person.	Household goods and furniture, wearing apparel, and personal effects claimed as exempt under Section 5205 of the CPLR.	1,000	00
E. Books, prints and pictures.	NONE.	00	00
F. Horses, cows, sheep and other animals (with number of each.)	NONE.	00	00
G. Automobiles and other vehicles.	1969 Pontiac stationwagon (subject to security interests as set forth in Schedule A-2.)	00	00
H. Farming stock and implements of husbandry.	NONE.	00	00
I. Shipping and shares in vessels.	NONE.	00	00
J. Machinery, fixtures, apparatus and tools used in business with the place where each is situated.	NONE.	00	00
K. Patents, copyrights and trade marks.	NONE.	00	00
L. Goods or personal property of any other description with the place where each is situated.	NONE.	00	00
	TOTAL	1,000	00

NOTE: If any space is insufficient, annex additional sheets.

Petitioner

David F. Williamson Co., Publishers
48 Niagara St., Buffalo, N. Y.—

Statement of all Property of Bankrupt or Debtor

Schedule B (3) CHOSES IN ACTION

		AMOUNT $	Cts.
A. Debts due Petitioner on open account.	NONE.	00	00
B. Policies of insurance.	Metropolitan Life Insurance Company - $25,000.00 - beneficiary is wife, Sonja Robinson	00	00
C. Unliquidated Claims of every nature with their estimated value.	NONE.	00	00
D. Deposits of money in banking institutions and elsewhere.	NONE.	00	00
	TOTAL	00	00

Petitioner

Statement of all Property of Bankrupt or Debtor

Schedule B (4) Property in reversion, remainder or expectancy, including property held in trust for the Debtor, or subject to any power or right to dispose of, or to charge.

(N. B.—A particular description of each interest must be entered with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the Debtor's Property has been conveyed by Deed of Assignment, or otherwise, for the benefit of creditors, the date of such Deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the Debtor.)

GENERAL INTEREST	PARTICULAR DESCRIPTION	Estimated Value of Interest $	Cts.
Interest in Land.	NONE.	00	00
Personal Property	NONE.	00	00
Property in Money, Stock, Shares, Bonds, Annuities, etc.	NONE.	00	00
Rights, and Powers, Legacies and Bequests.	NONE.	00	00
	TOTAL	00	00

PROPERTY HERTOFORE CONVEYED FOR BENEFIT OF CREDITORS		Amount Realized as Proceeds of Property Conveyed $	Cts.
Portion of Debtor's Property conveyed by Deed of Assignment, or otherwise, for the benefit of Creditors; date of such Deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to Debtor.	NONE.	00	00
Attorney's Fees, Sum or sums paid to Counsel, and to whom, for services rendered or to be rendered in this Bankruptcy.	Attorney fees paid on account to CHIRLIN & SHELDON (DONALD P. SHELDON, ESQ., of counsel), 1566 Statler Hilton Hotel, Buffalo, New York 14202.	300	00
	TOTAL	300	00

Petitioner

Statement of all Property of Bankrupt or Debtor

Schedule B (5) Property claimed as exempt from the operation of the Act of Congress relating to Bankruptcy. (N.B.—Each item of property must be stated, with its valuation, and, if any portion of it is Real Estate, its location, description and present use.)

		VALUATION $	Cts.
Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.	NONE.	00	00
Property claimed to be exempt by State laws, with reference to the statute creating the exemption.	Household goods and furniture, wearing apparel, and personal effects claimed as exempt under Section 5205 of the Civil Practice Law and Rules, New York	1,000	00
	TOTAL	1,000	00

Petitioner

David F. Williamson Co., Publishers 45 Niagara St., Buffalo, N. Y.—O-6

Statement of all Property of Bankrupt or Debtor

Schedule B (6) Books, Papers, Deeds and Writings Relating to Debtor's Business and Estate

The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects or any part thereof, which at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody, or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

BOOKS — Checkbooks and records in possession of Jack Robinson and/or Donald P. Sheldon, Esq.

DEEDS — Premises: 34 Carpenter Avenue, Town of Tonawanda, New York.

PAPERS — Invoices, statements, etc., in possession of Jack Robinson and/or Donald P. Sheldon, Esq.

Jack I. Robinson
Petitioner

OATH TO SCHEDULE B

State of New York
County of Erie } ss.

I, JACK ROBINSON, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Jack I. Robinson
Petitioner

Subscribed and sworn to before me this 3rd day of March, 1971.

(Official Character)

DONALD P. SHELDON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972

SUMMARY OF DEBTS AND ASSETS
From the Statements of the Debtor in Schedules A and B

Schedule A	1-a	Wages	00	00
" A	1-b (1)	Taxes due United States.	00	00
" A	1-b (2)	Taxes due States.	00	00
" A	1-b (3)	Taxes due Counties, Districts and Municipalities.	1,559	40
" A	1-c (1)	Debts due any person, including the United States, having priority by laws of the United States.	00	00
" A	1-c (2)	Rent having priority.	00	00
" A	2	Secured Claims.	70,939	04
" A	3	Unsecured Claims.	33,145	12
" A	4	Notes and Bills which ought to be paid by other parties thereto.	00	00
" A	5	Accommodation paper.	3,996	50
		Schedule A, Total,	109,640	06
Schedule B	1	Real Estate.	500	00
" B	2-a	Cash on Hand.	00	00
" B	2-b	Negotiable and non-negotiable instruments and securities.	00	00
" B	2-c	Stock in Trade.	00	00
" B	2-d	Household Goods.	1,000	00
" B	2-e	Books, Prints and Pictures.	00	00
" B	2-f	Horses, Cows, and other Animals.	00	00
" B	2-g	Automobiles and other Vehicles.	00	00
" B	2-h	Farming Stock and Implements.	00	00
" B	2-i	Shipping and Shares in Vessels.	00	00
" B	2-j	Machinery, Fixtures and Tools.	00	00
" B	2-k	Patents, Copyrights and Trade-Marks.	00	00
" B	2-l	Other Personal Property.	00	00
" B	3-a	Debts Due on Open Accounts.	00	00
" B	3-b	Policies of Insurance.	00	00
" B	3-c	Unliquidated Claims.	00	00
" B	3-d	Deposits of Money in Banks and elsewhere.	00	00
" B	4	Property in Reversion, Remainder, Expectancy or Trust.	300	00
" B	5	Property Claimed as exempt. $1,000.00		
" B	6	Books, Deeds and Papers.	00	00
		Schedule B. Total,	800	00

Jacob Babitsky
Petitioner

OBJECTIONS TO DISCHARGE
OF BANKRUPT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF

JACK ROBINSON,

Bankrupt

INDEX NO. BK-71-367

OBJECTIONS TO DISCHARGE OF THE BANKRUPT FILED UNDER SECTION 14 OF THE BANKRUPTCY ACT AND PETITION FOR DETERMINATION OF DISCHARGEABILITY UNDER SECTION 17-c(2) OF THE BANKRUPTCY ACT

TO: HON. BERYL E. McGUIRE, Referee in Bankruptcy

The petition of Manufacturers and Traders Trust Company respectfully shows the Court as follows:

1. Your petitioner is a domestic banking corporation with its principal office at One M & T Plaza, Buffalo, New York.

2. Your petitioner files this instrument as a statement of your petitioner's objections to the discharge of the bankrupt and, in addition, as a petition for determination of dischargeability under Section 17-c(2) of the Bankruptcy Act. Your petitioner's objections to the discharge of the bankrupt are based upon the facts that the bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152 and, in addition, while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business, money or property on credit or as an extension or renewal of

credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation, all within the meaning of Section 14-c of the Bankruptcy Act.

3. Your petitioner's claim hereunder to determination of the dischargeability of debts is based upon the contention that the indebtedness owing to your petitioner is not dischargeable because it constitutes a liability for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, within the meaning of Section 17-a(2) of the Bankruptcy Act.

I. OBJECTIONS TO DISCHARGE

Your petitioner objects to the discharge of the bankrupt, first, upon the ground that the bankrupt has committed an offense under 18 United States Code, Section 1[illegible] in that he has knowingly and fraudulently made a false oath in relation to this bankruptcy proceeding.

4. The bankrupt appeared and testified at an adjourned first meeting of creditors before this Court (Hon. Beryl E. McGuire, Referee in Bankruptcy, Presiding)on April 16, 1971, at which time he was interrogated with respect

to various matters involving his financial affairs and events and prior conversations affecting or bearing upon the question of his financial affairs. On information and belief, the bankrupt knowingly and fraudulently gave false testimony, under oath, at said hearing in each of the following instances. References are to pages of the transcript of the hearing, the original of which transcript is on file with this Court. In each case the question is set forth for purposes of placing the answer in context. The answer is the information alleged to have been given by Mr. Robinson falsely and fraudulently.

(a) Page 15 -- Q. Now, Mr. Robinson, at the time you signed Exhibit 1 in December of 1969, did you understand that you were entering into an arrangement with the Trust Company whereby they were obtaining security and certain collateral for [sic] you?

A. I did not. When I signed this note here, Mr. Spitzmiller gave me all these papers and I signed it all. I didn't -- I never questioned his -- what it was all about, because in the past I never had that experience. * * *

(b) Page 15 -- Q. And you did not ask Mr. Spitzmiller what you were signing?

A. No, I didn't.

(c) Page 16 -- Q. He told you what was in the paper, right?

A. I didn't understand the whole thing. He just gave it to me, sign it here and that's it. At the time I needed the money and I didn't question him before, because we had had transactions before and we never had any signing of any kind of papers. I just signed. He said just sign it here, this is the formality of the Bank, which I did.

(d) Page 18 -- Q. And Mr. Spitzmiller explained to you that they were taking a lien on goods, did he not?

A. I don't recall that. He explained -- as a matter of fact I never questioned him. He gave me the paper to sign and said, "It's all ready for you", which I did.

(e) Page 25 -- Q. You weren't aware that you were signing --

A. I was aware that I was signing it, but I wasn't aware of all what I was signing.

(f) Page 26 -- Q. And you had the opportunity to read that at the time?

A. No, I did not.

(g) Page 26 -- Q. You did not read it, in fact?

A. No, not at the time when I signed it, I didn't read it at all. * * *

(h) Page 57 -- Q. And you never told him that you did have any payable, did you?

A. No.

(i) Page 57 -- Q. So that the record is clear. When you had conversations with Mr. Spitzmiller on January 11th of this year, you did not tell him that you had outstanding accounts receivable? . . . Is that correct?

A. That's correct.

(j) Page 57 -- Q. And there's no question about that in your mind?

A. None at all.

(k) Page 57-58 -- Q. There's no possibility that this answer you just have given could be in error?

A. No.

(l) Page 58 -- Q. Mr. Spitzmiller says that you told him on January 11th that you had an account receivable payable to you by Niagara Frontier Services of Five Thousand Two Hundred Dollars. You did not make that statement to Mr. Spitzmiller, is that correct?

A. That's correct.

(m) Page 58-59 -- Q. He further says that you indicated that you had mentioned owing to you by Buffalo Butter and Egg in the amount of Three Thousand Five Hundred Dollars. Did you give that information to Mr. Spitzmiller on January 11th of this year?

A. I don't believe so.

(n) Page 59 -- Q. Is there any possibility that you did?

A. I don't think so.

(o) Page 60-61 -- Q. There is no question for the record that you gave no such information to Mr. Spitzmiller on that day, January 11th --

A. That's right.

Q. Is that correct? * * *

(p) Page 61 -- Q. * * * The next item that Mr. Spitzmiller mentions is Malecki Sausage, Four Thousand Nine Hundred Dollars. Did you tell Mr. Spitzmiller that you had that account receivable owing?

A. No.

(q) Pages 61-62 -- Q. And on that conversation, did you tell him that Twin Fair owed you Four Thousand Five Hundred Dollars?

A. No.

(r) Page 62 -- Q. And further relating to that specific conversation, did you tell Mr. Spitzmiller that Loblaw's, that's grocery chain, is that right? * * *

Q. That Loblaw's owed you Six Thousand Six Hundred Dollars? * * *

Q. Did you give that information to Mr. Spitzmiller?

A. No.

(s) Page 62 -- Q. * * * Did you also tell Mr. Spitzmiller on January 11th, 1971, that Basco Meat owed you Nine Thousand Five Hundred Dollars? Did you give that information?

A. No.

(t) Page 62-63 -- Q. Now, did you also tell Mr. Spitzmiller on January 11th, 1971, that Wardynski owed you Eleven Thousand Dollars?

A. No.

(u) Page 63 -- Q. * * * Finally, Mr. Robinson, on January 11th, did you tell Mr. Spitzmiller that Tripi owed you Three Thousand Six Hundred Dollars?

THE COURT: Your answer?

THE WITNESS: No.

(v) Page 67 -- Q. That in January of this year you told Mr. Sheldon that you had a list?

A. I didn't tell Mr. Sheldon. I don't recall ever telling him anything.

(w) Page 67 -- Q. It's clear then that you definitely did not tell him?

A. Not to my recollection. I don't think so.

(x) Page 68 -- Q. Okay. So it's your testimony then at the meeting on January 13th you did not give Mr. Sheldon any such list?

A. No, I don't think so.

(y) Page 68 -- Q. And in response to that, do you recall advising Mr. Sheldon that the accounts receivable which you had given him were owing to you personally and not to New York Commodities, Inc.? Do you recall giving that answer?

A. No, I don't believe so.

5. Contrary to the testimony so given, the bankrupt had in fact read the letter of commitment before signing the same and stated to the bank officer at that time (December 12, 1969) that he understood it completely. At the time he signed the security agreement, the agreement was discussed. Mr. Robinson was advised that the Trust Company had a lien on his inventory and further discussion occurred, all as will more fully be developed upon a hearing hereon.

6. With respect to the questions regarding information allegedly given by the bankrupt to the Trust Company on January 11, 1971 and thereafter, at a conference at which George W. Sheldon, a bank officer was present, the information regarding alleged accounts receivable in existence on January 11, 1971 was given to the bank officer, Robert F. Spitzmiller, Jr., by the bankrupt at the time referred to in the respective questions. This information was given in conjunction with the inquiry of the Trust Company regarding the

financial status of the bankrupt at that time, in order to determine possible sources of recovery for the Trust Company. At the subsequent conference with Mr. Sheldon, inquiry was made with regard to the list of creditors which had been obtained from Mr. Robinson on January 11, and Mr. Robinson reaffirmed that the accounts receivable were owing and that they belonged to him and not to his principals in New York City.

7. The questions asked at the hearing on April 16, 1971 were material and pertinent to the affairs of the bankruptcy and to the inquiry properly heard by this Court at a first meeting of creditors. I am advised by counsel for the Trust Company that the false testimony given by the bankrupt at that time constituted a violation of Title 18, United States Code, §152.

8. In addition to the above, the bankrupt, while engaged in business obtain[illegible] for such business money or property on credit on a fraudulent statement in writing, as above indicated. The details with regard to this objection are as follows:

(a) Beginning approximately July 18, 1967, Mr. Robinson borrowed money from the Trust Company from time to time. He identified himself as a Food Broker in polish Krakus hams and was carried on the records of the Trust Company as a distributor of Krakus hams.

(b) Thereafter and about May 5, 1969, the bankrupt filed with Manufacturers and Traders Trust Company a financial statement, a true copy of which is annexed hereto and made a part hereof, which financial statement was marked Exhibit 5 at the said hearing before this court on April 16, 1971,

which financial statement was filed, by its terms, for the purpose of supporting applications for further credit, among other things.

(c) At the time the said financial statement was filed with the Trust Company, there was due and owing to the Trust Company the sum of approximately Sixteen Thousand Eight Hundred Eighty-seven Dollars and Fifty Cents, being credit extended to the bankrupt by the Trust Company at that time. Thereafter and from time to time, the bankrupt requested from Manufacturers and Traders Trust Company further credit for the purpose of purchasing additional inventory and carrying of accounts receivable.

(d) In or about early December, 1969, the bankrupt came to the Delaware Office of the Trust Company and advised the Trust Company that he had the opportunity to make a most advantageous purchase of hams. He requested a Thirty Five Thousand Dollar line of credit. His request was discussed and his financial statement dated April 25, 1969 was reviewed. At that time, the bankrupt assured Robert Spitzmiller, an officer of the Trust Company, that the accounts receivable held by him at the time were greater than those shown on the financial statement and that he would be using the additional Seventeen Thousand Dollars which he would be borrowing under the increased line to carry the accounts receivable and to purchase additional hams. Approval was obtained for the increased line of credit from another officer of the Trust Company and papers were in process of preparation. Because these were not fully completed on December 10, 1969, the additional sums of money were loaned to Mr. Robinson on December 10, with the understanding that a new note would be executed when the documents were complete.

(e) On or about December 12, 1969, the additional papers having been completed, the promissory note for Thirty Five Thousand Dollars dated December 10, 1969 was cancelled and a new note obtained from Mr. Robinson for Thirty Five Thousand Dollars, dated on that day (which note was marked Exhibit 1 on the examination of April 16, 1971).

(f) On information and belief, the written financial statement, dated as of April 25, 1969, was false and fraudulent, when given, in at least the following particulars:

(1) The bankrupt, on information and belief, did not hold accounts receivable at that time for a total of $27,200, as represented, but, on information and belief, held accounts receivable (if any) for sums less than that amount, the exact amount being unknown to your petitioner.

(2) The bankrupt did not, on information and belief, hold life insurance with a cash value

of $8,275 as represented, but had such insurance with a cash value, if any, substantially less than that amount, the exact amount being unknown to your petitioner.

(3) The bankrupt did not possess personal property in the value and amount of $14,200, as represented, but possessed personal property of a much lower amount, the exact amount being unknown to your petitioner.

(4) The bankrupt, contrary to the representations on the financial statement, had outstanding liabilities in excess of $39,987.50 and, on information and belief, omitted substantial liabilities, including, without limitation, the following:

(a) A debt secured by collateral mortgage, held by East Buffalo Credit Union, with a balance owing of at least $7,493.00

(5) In addition to the above, your petitioner believes and therefore alleges that all or a major portion of the debts listed on Schedule A(3) of the bankurupt's schedules filed herein, totalling $33,145.12, were in existence prior to the filing of said financial statement of April 25, 1969, and further, prior to the further extension of credit on December 10, 1969, or, in the alternative, that equivalent indebtednesses were in existence which have been since paid and the said debts listed in Schedule A(3) have been substituted therefor. Your petitioner is unable to be more specific in this regard, inasmuch as the bankrupt has failed to comply with the direction of this court made at the initial session of the first meeting of creditors that he amend his schedules to set forth the dates of the various indebtednesses as required by the Act and the official form. Your petitioner will set forth the detailed claims in this regard at the hearing hereon, based on information presently available solely to the bankrupt and his counsel. For reference herein, a true copy of said Schedule A(3) is annexed hereto and made a part hereof by this reference.

(6) On information and belief, the profit and loss account is false and fraudulent in that it overstates the amount of the total income of the bankrupt during the period set forth and that, on information and belief, his net profit before Federal taxes (stated at $35,200) is substantially in excess of his actual net income, the exact amount of which is unknown to petitioner.

(7) The financial statement falsely and fraudulently

sets forth a net worth of $84,969.55, whereas, in fact, on information and belief, the bankrupt had little, if any, net worth and, in fact, may have had an outstanding deficit, depending upon the exact amount of assets and liabilities held by him at the time.

(8) The bankrupt failed and neglected to list the mortgage held by East Buffalo Credit Union as a lien against the premises at 34 Carpenter Avenue, Buffalo, New York, but referred only to the first mortgage held by Marine Trust Company.

9. At the time the increase in the line of credit to $35,000 was approved in December, 1969, the maximum outstanding loan to the bankrupt was approximately $19,925. The Trust Company would not have extended credit in even this amount, had it known the true facts with respect to the financial statement, and most certainly would not have permitted any increase in the line of credit from that amount.

10. The Trust Company relied upon and believed the financial statement of April 25, 1969, to fairly and accurately reflect the financial condition of the bankrupt at that time and, in the absence of any information to the contrary, to continue to reflect fairly and approximately the financial condition of the bankrupt thereafter, no adverse financial events having occurred or been reported to the Trust Company, as agreed by the bankrupt therein.

11. On information and belief, the proceeds of the money borrowed by the bankrupt subsequent to April 25, 1969 and, without limitation, as a result of the increase in the line of credit in December, 1969, were used in part for the business in which the bankrupt was engaged, and the financial obligations thereof.

12. The false statements set forth in said financial statement were material within the meaning of §14-c

(3) of the Bankruptcy Act.

13. Additionally, and as an alternative ground for the objection to the discharge of the bankrupt, the Trust Company alleges that on or about December 8, 1970, the bankrupt borrowed certain monies from Beneficial Finance Company, a finance company with offices in the City of Buffalo, New York, a portion of which monies were used to pay interest on business obligations of the bankrupt or for other business obligations of the bankrupt, which loan was obtained by a false financial statement in writing. The financial statement was false and fraudulent in that the bankrupt listed obligations owing to Marine Midland Trust Company of Western New York and listed no other financial obligations but, instead, stated that he owed no other debts. The financial statement was further false and fraudulent in that it indicated that the bankrupt's total indebtedness was $28,200. The financial statement was further false and fraudulent in that it stated that the bankrupt's monthly income was $1,500.

14. In fact, however, the bankrupt owed extensive additional indebtednesses, reflected on Schedules A(2), A(3) and A(5) of his schedules accompanying his petition in bankruptcy in this court, all of which are included herein by this reference, which indebtedness approximated, on information and belief, at December, 1970 something in excess of $100,000. That your petitioner's information in this regard is based upon testimony by the bankrupt before this court on April 16, 1971 (commencing at page 108).

DETERMINATION OF DISCHARGEABILITY
UNDER SECTION 17-c(2) OF THE BANKRUPTCY ACT

Your petitioner, pleading in the alternative, prays for a determination that the indebtedness owing to your petitioner is not dischargeable pursuant to Section 17-c(2) of the Bankruptcy Act in its entirety, and for such other and further relief as to the court may seem just and proper in the premises, and alleges as follows:

15. Your petitioner respectfully realleges each and all of the allegations set forth in paragraphs 3 and 8 through 12 inclusive, hereinabove set forth, as if separately restated and renumbered as part of this claim.

16. In addition to the matters hereinabove realleged, your petitioner alleges that at the time the bankrupt applied for and obtained the loan of $35,000 on December 10, 1969 (thereafter renewed by note dated December 12, 1969), he had represented orally to the Trust Company that he had the opportunity to make a most advantageous purchase of ham and that he would use the funds for that purpose and for the further purpose of carrying accounts receivable. On information and belief, said representations were false and fraudulent and were made for the purpose of inducing Manufacturers and Traders Trust Company to give money to the bankrupt. On information and belief in actual fact, the bankrupt had no intention of purchasing additional hams and did not have any outstanding accounts receivable at the time which he proposed to carry.

17. I am advised by counsel for the Trust Company that, based upon the information hereinabove set forth and upon

the provisions of Section 17-a(2) of the Bankruptcy Act, it is their opinion that the Trust Company is entitled to a determination that the indebtedness owing to the Trust Company by the bankrupt is not dischargeable under the Act.

WHEREFORE, Manufacturers and Traders Trust Company, the petitioner, respectfully prays for relief as hereinabove set forth, and for such other and further relief as to the court may seem just and proper in the premises.

Dated: June 7, 1971
Buffalo, New York

MANUFACTURERS AND TRADERS TRUST COMPANY

By: R. Robert F. Spitzmiller, Jr.
Robert F. Spitzmiller, Jr.
Assistant Vice President

CRB-1 (3-67) PLEASE GIVE FIGURES REQUESTED ON THE REVERSE SIDE AND ANSWER ALL QUESTIONS

INDIVIDUAL FINANCIAL STATEMENT

Copy and return to Dela

EXHIBIT 11
EVIDENCE
IDENT.
RPTR. DATE
JACK W. HUNT, C.S.R.
AND ASSOCIATES

Name Jack Robinson — 836-2673

Business Canned Meat Broker - Polish Krakus Ham

Address 34 Carpenter Ave., Buffalo, N.Y. 14223

Branches

To MANUFACTURERS and TRADERS TRUST COMPANY

For the purpose of procuring credit from time to time with you for my negotiable paper or otherwise, I furnish the following as a true and accurate statement of my financial condition on 4/25 *19* 69. *I agree to and will notify you immediately in writing of any materially unfavorable change in my financial condition, and in the absence of such notice or of a new and full written statement, this may be considered as a continuing statement and substantially correct; and it is hereby expressly agreed that upon application for further credit, this statement shall have the same force and effect as if delivered as an original statement of my financial condition at the time such further credit is requested.*

If any judgment is entered or any legal action or prosecution is commenced against the undersigned, or if the undersigned becomes financially embarrassed, or on the failure of the undersigned to notify you of any such change in the financial condition of the undersigned as above mentioned, or if the undersigned assigns any accounts or transfers or encumbers any assets which in your opinion materially affects the business or financial condition of the undersigned, then all obligations of whatsoever name, kind or nature held by you upon which the undersigned is obligated as maker or endorser shall at your option, be and become immediately due, notwithstanding the date of payment as fixed by the obligation then held by you, and any credit balance of the undersigned may be applied by you in satisfaction of any such obligation.

ASSETS		LIABILITIES	
CURRENT ASSETS		**CURRENT LIABILITIES (Due Within the Year)**	
Cash on hand	$ 900.--	Notes Payable to Mfrs. and Tr. Trust Co.	$ 16.887.50
Cash in Mfrs. and Tr. Trust Co.	5.031.34	Notes Payable to Other Banks Secured	
Cash in Bank		Notes Payable to Other Banks Unsecured	
Cash Advanced on Mdse.		Notes Payable to Others	
Good Notes Receivable (From Customers)		Accounts Payable for Borrowed Money	
Good Accounts Receivable " " Current	12.500.--	Accounts Payable for Merchandise (not due)	
" " 30-60 Days	8.000.--	Accounts Payable for Merchandise (past due)	
" " 60-90 Days	6.700.--	Notes Payable for Merchandise	
" " 90 Days-6 Mos.		Accrued	
Good Accounts Receivable " " 6 Mos.-1 Yr. (Special Dating Only)		Advances by Customers for Merchandise	
*(List regular accounts over 6 mos. below.)		Federal Income Taxes	
Trade Acceptances		State Income Taxes	
Merchandise Finished (At cost or market, please specify)		All other Liabilities (Itemize)	
Merchandise Unfinished (At cost or market, please specify)			
Raw Material (At cost or market, please specify)			
Market Value—Listed stocks and bonds (Itemize on page 2)			
Other Quick Assets (Itemize)			
Merchandise	12.500.--	TOTAL CURRENT LIABILITIES	16.887.50
TOTAL QUICK ASSETS	45.631.34	Mortgage Debt (Maturity .....) (Any Maturities within current year to be included in Current Liabilities)	23.100.--
FIXED ASSETS			
Cash Value Life Insurance (Do no deduct loans)	8.275.--	Chattel Mortgages	
Other Investments (Unlisted Securities) (Itemize on page 2)			
*Receivable (6 mos. to one year)			
Receivables (Over one year)		Loans on Cash Value Life Insurance	
Receivables from Customers (Doubtful)		Other Deferred Liabilities (Itemize)	
Supplies			
Autos and Trucks	5.350.71	TOTAL LIABILITIES	39.987.50
Machinery and Fixtures			
Real Estate and Buildings (Used in Business) (Give details on attached sheet)	51.500.--	Reserves	
Real Estate and Buildings (Not Used in Business) (Give details on attached sheet)		Depreciation (Itemize)	
Other Assets (Itemize)			
Personal Property	14.200.--	Net Worth	84.969.55
TOTAL	124.957.05	TOTAL	124.957.05

PROFIT AND LOSS ACCOUNT:

Sales gross for 10 months ended 4/30 19 69 — Cash / Charge	$	
Less rebate in discounts, allowances, etc.		
Net Sales	78.200.--	
Cost of Merchandise Sold:	35.500.--	
(For Manufacturer: Please attach itemized list of labor and factory overhead)		
Inventory 19	$	
Add: Purchases		
Other Direct Costs		
Total		
Less Inventory 19		
Gross Profit		42.700.00
Selling Expense	6.200.00	
Delivery Expense	400.00	
Proprietors' Salary		
Other Salaries		
Interest on borrowed money and mortgages		
Bad Debts charged off		
Depreciation	900.00	
General Expense (Please attach itemized list)		
Total Expense		7.500.00
Operating Profit		
Other Income: Investments		
Other Income: Cash Discounts		
Other Income: Other (Itemize)		
		35.200.00
Net Profit before Federal Taxes		4.400.00
Federal Taxes		30.800.00
Amount carried to Net Worth		

RECONCILEMENT OF NET WORTH

Undivided Net Worth previous year	$	$
Add Net Profit as above	$ 30.800.00	
Adjustments: itemize		
NET WORTH AS SHOWN ON BALANCE SHEET		$ 84.969.55

U.S. SECURITIES, STOCKS, BONDS AND INVESTMENTS

No. of Shs.	Description	Market Value	Show Owner of Record

IT IS VERY IMPORTANT TO ANSWER ALL OF THE QUESTIONS LISTED BELOW

The following data shall be considered as part of the foregoing statement:

Is statement audited by a Public Accountant? ..... If so by whom? .....

Have you any contingent liability for:

- Bills, Accounts, Notes or Acceptances pledged or discounted? no $.....
- Bills, Accounts, Notes, or Acceptances sold with recourse? no $.....
- Accommodation paper or endorsements for others? no $.....
- Foreign Credits including discounted drafts? no $.....
- Any real estate bonds or mortgages? no $.....
- Any other bonds or guarantees? no $.....
- Litigation in process or threatened (not shown in liabilities)? no $.....
- Additional Federal Income Taxes? no $.....
- Any other reason? $.....

Are there any judgments or suits against you? no $.....
Are any of your assets pledged as security for loans, advances or other liabilities? no Amount $.....
Is any merchandise included in figures on consignment? no Amount $.....
Is any merchandise slow moving or obsolete? no Amount $.....
Name and peak amount due from any one source? F. Wardynski Amount $ 12.000.-
Bills, accounts or acceptances sold without recourse Amount $.....

GENERAL INFORMATION

To what date have your records been examined by the Internal Revenue Department? 1967
On statement date what were your commitments or contracts regarding the purchase of material or merchandise for the current season? none Other commitments and contracts none
What are your terms of sale? 30 net
Are all bad and doubtful assets excluded from the above statement? yes Amount $.....
What amount of Accts. Rec., Notes Rec. or Acceptances is past due, extended or renewed? $ none
Are goods shipped to any agencies carried on books in merchandise account or accounts receivable? yes

Does your deferred indebtedness constitute a lien on current assets? no
Do you discount or anticipate your bills? no
Fire Insurance on Buildings and Plant $ 45.000.- On Merchandise $ 25.000.- Total $ 70.000.-
Automobile Liability 100-50-5 Life Insurance $ 70.000.- To Whom Payable wife
Give basis of inventory, whether actually taken, ... or if estimated ..... by whom self date 4/30/69

Maximum Indebtedness during the past year was { Bank $..... Trade $..... } From ..... Month — To ..... Month
Minimum Indebtedness during the past year was { Bank $..... Trade $..... } From ..... Month — To ..... Month
On what date does your fiscal year close? end of year
Are you connected in any way with other enterprises or do you endorse or guarantee for others? If so, please give particulars.....

Give details of liabilities due to sources in which you are financially interested none

Do you at any time during the year endorse or guarantee for other interests or individuals? .....
Give names of all Banks where accounts are kept, lines of credit given by each, and method of borrowing (unsecured, against endorsements, guaranty, collateral or other security):

NAME	Lines of Credit	Method
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....

Other Bankers, other sources of credit and Brokers handling notes:

NAME	Lines of Credit	Method
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....

State whether the proceeds of loans applied for are to be used:

(a) For permanent investments, that is investments in lands, plants, machinery, improvements, or transactions of a similar nature

or

(b) For agricultural, industrial, or commercial purposes, in connection with the production and distribution of commodities.....

Do your plans for the current year involve any material additions or improvements to your real estate, plant or equipment? .....
If so, please state the nature, approximate cost and method of financing such changes .....

The undersigned does hereby certify that all the ASSETS which are included in this statement, stand in the name of the undersigned and that no part of such a[illegible]ts is covered by a Bill of Sale, Chattel Mort[illegible] or Lien of any name or nature, or in any way pledged as security for any loan [illegible]ebt except as stated.

Buffalo, N. Y., ... 1/5 1967 .....
(Authorized Signature)

NAME _____

BUSINESS _____

ADDRESS _____

STATEMENT OF REAL ESTATE HOLDINGS AS OF _____

SUPPLEMENTING FINANCIAL STATEMENT OF THAT DATE FURNISHED TO

Manufacturers and Traders Trust Company

Buffalo, New York 14240

(List each property in separate column)

LOCATION	34 Carpenter Ave.	Buffalo, N.Y. 14223
DESCRIPTION (Type of Property)	Split Level	
NAME OF OWNER OF RECORD	Joint	
DATE OF PURCHASE AND PRICE PAID	1964 $45.000.-	
ASSESSED VALUATION Land / Building		
VALUATION AS CARRIED ON STATEMENT (Book Value)	51.500.-	
Does this represent Cost, Appraised or Market Value?	Market	
If Appraised, by whom? Date?		
MORTGAGES: (Amounts, names of holders, maturities, and interest rates). 1st mtge.	Marine Trust Co. 5 3/4	
2nd mtge.		
3rd mtge.		
	Amounts / Due Dates	Amounts / Due Dates
PAYMENTS REQUIRED ON MORTGAGES: (Amounts and due dates) 1st mtge.	196.- / 1st	
2nd mtge.		
3rd mtge.		
EQUITY OF UNDERSIGNED		
RENTALS RECEIVED DURING LAST TWELVE MONTHS From To		
Less: ACTUAL OPERATING AND CARRYING CHARGES (Not including depreciation)		
ACTUAL NET INCOME		
AMOUNT OF RENT LOST BECAUSE OF VACANCIES DURING LAST TWELVE MONTHS		
ANNUAL RENTAL VALUE OF SPACE NOW VACANT		
TO WHAT DATE ARE ALL TAXES AND ASSESSMENTS PAID? (If in arrears include in Liabilities on Page 1)	Current	
AMOUNTS AND CLASSES OF INSURANCE CARRIED	45.000,- Fire 50.000.- Liability	
ANY LITIGATION IN PROGRESS OR PENDING?	no	

LOCATION		
DESCRIPTION (Type of Property)		
NAME OF OWNER OF RECORD		
DATE OF PURCHASE AND PRICE PAID		
ASSESSED VALUATION — Land / Building		
VALUATION AS CARRIED ON STATEMENT (Book Value) Does this represent Cost, Appraised or Market Value? If Appraised, by whom? Date?		
MORTGAGES: (Amounts, names of holders, maturities, and interest rates). — 1st mtge. / 2nd mtge. / 3rd mtge.		
	Amounts / **Due Dates**	**Amounts** / **Due Dates**
PAYMENTS REQUIRED ON MORTGAGES: (Amounts and due dates) — 1st mtge. / 2nd mtge. / 3rd mtge.		
EQUITY OF UNDERSIGNED		
RENTALS RECEIVED DURING LAST TWELVE MONTHS From To		
Less: ACTUAL OPERATING AND CARRYING CHARGES (Not including depreciation)		
ACTUAL NET INCOME		
AMOUNT OF RENT LOST BECAUSE OF VACANCIES DURING LAST TWELVE MONTHS		
ANNUAL RENTAL VALUE OF SPACE NOW VACANT		
TO WHAT DATE ARE ALL TAXES AND ASSESSMENTS PAID? (If in arrears include in Liabilities on Page 1)		
AMOUNTS AND CLASSES OF INSURANCE CARRIED		
ANY LITIGATION IN PROGRESS OR PENDING?		

IMPORTANT

If there have been any transfers of any of the properties listed above, additional mortgages placed, or other properties acquired since statement date, give particulars.

The above statement is to be deemed supplementary to and a part of the statement of the undersigned to the Manufacturers and Traders Trust Company of Buffalo, New York, dated , with the same effect as if therein set forth in full.

Date Signed 1/6/69 Signature

Statement of all Debts of Bankrupt or Debtor

Schedule A (3) CREDITORS WHOSE CLAIMS ARE UNSECURED

N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.

Insert in all cases, reference to ledger or voucher; names of creditors and their residence, if known, or if unknown, so state, when and where debt was contracted; whether claim is contingent, unliquidated or disputed; nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as partner or joint contractor, or with any other person; and if so, with whom.	AMOUNT DUE OR CLAIMED $	Cts.
American Oil Company, 165 North Canal Street, Chicago, Illinois 60606 - merchandise	204	10
Mobil Oil Company, P. O. Box 600, Kansas City, Missouri 64141 - merchandise	64	72
Texaco, Inc., P. O. Box 2000, Bel-Air, Texas 77401 - merchandise	234	96
Sheridan Motors, Sheridan Drive, Amherst, New York 14226 - services	120	48
American Express Cards Division, P. O. Box 1934, New York, New York 10008	591	55
American Airlines, P. O. Box 521, New Hyde Park, New York 11040	58	00
Dr. Virgil Boeck, 1275 Delaware Avenue, Buffalo, New York 14209 - services	150	00
Dr. W. Weimer, D.D.S., 4098 Bailey Avenue, Buffalo, New York 14226 - services	368	00
Mr. Merwin Adler, 749 Delaware Road, Kenmore, New York 14223 - services	60	00
Dr. Bertram A. Portin, 2900 Main Street, Buffalo, New York 14214 - services	30	00
Dr. Philip Wels, 1275 Delaware Avenue, Buffalo, New York 14209 - services	15	00
Dr. Max Weiner, 1645 Hertel Avenue, Buffalo, New York 14216 - services	24	00
Northtown Pharmacy, 3091 Sheridan Drive, Amherst, New York 14226 - merchandise	74	34
Fox & Staniland, 702 Main Street, Buffalo, New York 14202 - merchandise	75	03
Alfred L. Marks, 3053 Sheridan Drive, Amherst, New York 14226	30	00
Connell Gas Heating Service, 103 Lincoln Avenue, North Tonawanda, New York 14120	153	26
Naab & Mohring, 2362 Genesee Street, Cheektowaga, New York 14225	41	92
(CONTINUED)		
TOTAL		

Petitioner

SCHEDULE A (3) - Continued

Automobile Club of Western New York, 976 Delaware Avenue, Buffalo, New York 14240	$ 35.00
Sealtest All-Star Diaries, 1730 Dale Road, Cheektowaga, New York 14225 - merchandise	78.41
Adam, Meldrum, & Anderson Co., Inc., 389 Main Street, Buffalo, New York 14203 - merchandise	48.27
L. L. Berger Co., Inc., 514 Main Street, Buffalo, New York 14202 - merchandise	23.55
The Kleinhan's Company, Main and Clinton Streets, Buffalo, New York 14203 - merchandise	47.45
W. T. Grant Co., 546 Main Street, Buffalo, New York 14202 - merchandise	34.01
The William Hengerer Company, 465 Main Street, Buffalo, New York 14203 - merchandise	31.22
Temple Shaarey Zedek Hartford and Getzville Roads, Williamsville, New York 14221	150.00
Taylor Travel Service, Inc., 3959 Main Street, Buffalo, New York 14214 - judgment entered, City Court of Buffalo - 1/15/71 Ross & Stein, attorneys, 302 Ellicott Square Building, Buffalo, New York 14203	293.53
Manufacturers & Traders Trust Company, Empire Card, 1100 Wehrle Drive, Williamsville, New York 14221	941.70
Manufacturers & Traders Trust Company, Delaware Avenue Office, 236 Delaware Avenue, Buffalo, New York 14202	137.50
Liberty National Bank and Trust Company, Installment Loan Department, 424 Main Street, Buffalo, New York 14240	2,136.00
Liberty National Bank and Trust Company, Master Charge, 424 Main Street, Buffalo, New York 14240	986.55
Marine Midland Banks-Western, Master Charge, 241 Main Street, Buffalo, New York 14203	717.06
Marine Midland Banks-Western, Custom Credit, 241 Main Street, Buffalo, New York 14203	4,831.83
Marine Midland Banks-Western, Midland Time Plan, 241 Main Street, Buffalo, New York 14203	1,510.00
Hebrew Benevolent Loan Association, 787 Delaware Avenue, Buffalo, New York 14209	650.00

(CONTINUED)

Petitioner

SCHEDULE A (3) - Continued

Hickman, Coward & Wattles, Inc., 125 Gardenville Parkway West, Buffalo, New York 14224	$ 4,986.00
Frank Wardynski & Sons, Inc., 336 Peckham Street, Buffalo, New York 14206	12,878.56
Max M. Yellen, 328 Woodbridge Avenue, Buffalo, New York 14214 - co-signer on East Buffalo Credit Union obligation	
Isador Lansky, 116 Deerhurst Park Boulevard, Kenmore, New York 14217 - co-signer on First Warsawer Club Federal Credit Union obligation	
Melvin Siegel, 240 Hunters Lane, Williamsville, New York 14221 - co-signer on First Warsawer Club Federal Credit Union obligation	
Joseph Palanker, 60 Fairmount Avenue, Kenmore, New York 14223 - co-signer on Hebrew Benevolent Loan Association obligation	
Isaac Klein, 40 Hardt Lane, Amherst, New York 14226 - co-signer on Hebrew Benevolent Loan Association obligation	
Melvin Mesnekoff, 147 Ranch Trail West, Williamsville, New York 14221 - co-signer on Hebrew Benevolent Loan Association obligation	
Leon Rubin, 17 Varick Street, New York, New York 10013 co-signer on Hickman, Coward & Wattles, Inc. obligation	
E. T. Clauss and Company, 735 Delaware Avenue, P. O. Box 534, Buffalo, New York 14240	289.51
The Glassman of Western Nwe York, 703 Woodland Drive, Kenmore, New York 14223	43.61
TOTAL	$33,145.12

Petitioner

626-628 LIBERTY BANK BLDG.
BUFFALO, N.Y. 14202
853-5600

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter

of

JACK ROBINSON in Bankruptcy

Bankrupt No.
BK-71-376

Proceedings taken before BERYL E. McGUIRE, Referee in Bankruptcy, at the Federal Court House, Buffalo, New York, on April 16th, 1971, commencing at 2:15 P.M.

APPEARANCES:

CHIRLIN & SHELDON,
By DONALD P. SHELDON, ESQ.,
1566 Statler Hilton Hotel,
Buffalo, New York,
Appearing for Bankrupt.

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR,
By WILLIAM H. GARDNER, ESQ.,
One M&T Plaza,
Buffalo, New York,
Appearing for Manufacturers and Traders Trust Company.

CALLAHAN, STIEMKE & McKENNA,
By JOHN T. CALLAHAN, ESQ.,
1360 Statler Hilton Hotel,
Buffalo, New York,
Appearing for Beneficial Finance Company.

STATEMENTS
EXAMINATIONS BEFORE TRIAL
DEPOSITIONS
CONFERENCES
CONVENTIONS
ARBITRATIONS

CERTIFIED SHORTHAND REPORTER
LICENSED BY THE
STATE OF NEW YORK
CERTIFICATE NO. 517

JACK W. HUNT, C. S. R.
OFFICIAL SUPREME COURT REPORTER
AND ASSOCIATES

INDEX TO WITNESSES

	Examined by:		
	Gardner	Sheldon	Callahan
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THE COURT: Mr. Gardner, I see we have a Court Reporter present to make a transcript of the proceeding?

MR. GARDNER: Yes, your Honor. For the record, I understand this is an adjourned date of the first meeting of creditors.

THE COURT: And the name of the reporter?

THE REPORTER: Philip Sabatino.

THE COURT: Mr. Sabatino, will you come forward, please?

(Whereupon the reporter was then sworn by the Referee.)

THE COURT: Mr. Gardner, you're appearing on behalf of the M&T Bank, is that correct?

MR. GARDNER: Yes, your Honor.

THE COURT: And Mr. Sheldon, you're appearing on behalf of Mr. Robinson?

MR. SHELDON: That is correct.

THE COURT: And the purpose of this adjournment is to examine the Bankrupt further?

MR. GARDNER: Yes, sir.

THE COURT: All right. Mr. Robinson, will you take the stand, please?

(Whereupon the Bankrupt was then duly sworn

by the Referee.)

MR. SHELDON: Your Honor, as the Manufacturers and Traders Trust Company has not filed a proof of claim in this proceeding, I would ask that Mr. Gardner advise the Court as to the amount of the M&T obligation, the date when the debt was incurred and whether or not they are an secured or unsecured creditor?

MR. GARDNER: If your Honor please, the Manufacturers and Traders Trust Company is, as I understand it, at least partially secure. We have a balance owing under a note I believe dated January 16th, 1969, signed by the Bankrupt. We also have a balance owing under a note dated December 12th, 1969, signed by the Bankrupt, given the amount of thirty-five thousand dollars. The entire balance of which is unpaid. We claim, and reserve our full rights as a secure creditor to the extent that we are able to establish the existence of any collateral. I have not filed a proof of claim because I don't yet know exactly what our status will be after

these facts are developed.

MR. SHELDON: Your Honor, I would like to know the balance of the obligation as to the note of January 16th of '69.

MR. GARDNER: Your Honor, as a matter of courtesy ~~security~~, I'd like to give counsel any information he wishes. I'm not prepared to take a specific stand with reference to individual notes and I doubt that the M&T is before the Court for purposes of examination at this particular time. I believe the comments of counsel are out of place unless counsel takes the position that we are not a bona fide creditor of the Bankrupt.

MR. SHELDON: Your Honor, I think that it's important to my examination that we know when the debt was incurred and that I may have some right with respect to questions which Mr. Gardner asks if they go beyond a point which I feel he can ask. Therefore, I think he's obligated to recite to the Court the duration of the obligation and amount of it. There may not be any obligation before

December of 1969 and I think that by not giving any amount, he's saying that. And, therefore, I think they are obligated to tell the Court if there is an obligation in January of '69, that there is an amount due and owing on that.

THE COURT: What is the information of the January 16, '69 --

MR. GARDNER: Your Honor, if I may explain. Frankly there has been some hastling going on between us ever since the M&T attempted to obtain litigation and information from the Bankrupt prior to the initiation of this proceeding in which Mr. Sheldon takes the position that our debt emanates from December of '69 only. And on some theory that therefore totally escapes me and dates back to the most medieval days that he would limit my right to ask questions of the Bankrupt almost to a name, rank and serial number basis. I frankly take the position that I am a creditor of this proceeding, I am entitled in my view, your Honor. I

represent, your Honor, to ask questions which are in any way relevant to the assets of the, accessible liabilities of the Bankrupt without regard to the particular position of the Trust Company. And, in fact, as much as and fully as a trustee could.

THE COURT: I do not know whether a trustee has been appointed. If one has been, he should be here.

MR. GARDNER: Surely there's no possible basis for some type of limitations upon my right to examine the Bankrupt. If counsel has some possible basis, I suggest that he put it in or before we get started.

MR. SHELDON: I'm not saying there are limitations. I'm saying he should recite his obligations which he has particularly avoided telling the Court. What the amount of the obligation is in January, whereby he told the Court what the amount of the obligation was in December. And, I think he's saying something by doing that.

THE COURT: Do you dispute that the M&T is a creditor?

MR. SHELDON: No, I don't dispute that they are a creditor, your Honor.

THE COURT: And do you object to any examinations by the bank prior to your receiving that information?

MR. SHELDON: I'm just asking, requesting that he advise the Court for the record as to the amount of his obligation so that he shows that he is a creditor and when the debt was incurred. The same information which I must furnish to the Court pursuant to the motion which was granted at the first meeting of creditors, that Court ruled on the motion that was made to amend. So, now, this is the type of cooperation that a Bankrupt gets where the creditors themselves are not willing to tell them when the debt was incurred.

THE COURT: Since you objected to the examination by the M&T, to the debt of Mr. Robinson, prior to examination, I'll overrule the objection. You may ask, Mr. Gardner.

MR. GARDNER: Thank you, your Honor. May I merely say

that as soon as I have an opportunity, not having been forewarned, I will be glad to supply any information that counsel wishes. I don't have it readily at my fingertips at the moment.

CROSS EXAMINATION BY MR. GARDNER:

Q. Mr. Robinson, prior to filing bankruptcy herein, were you engaged in business in any way?

A. I don't quite understand.

Q. Were you engaged in business during the past three years, Mr. Robinson?

A. Yes, I'm a salesman.

Q. You're a salesman?

A. Yes.

Q. And what is the nature of your business or your employment, whatever it was?

A. Selling canned meats.

Q. And were you acting as an employee or as an agent or what precisely --

A. Salesman.

Q. As a salesman for whom?

A. For whom? New York Commodities.
Q. And who is New York Commodities?
A. It's my employer.
Q. Is it a corporation?
A. Yes.
Q. And where does it work out of? Is that New York City?
A. New York City is correct.
Q. Do you know the street address off --
A. 745 Fifth Avenue.
Q. Now, is there a difference in your parlance between a salesman and a broker?
A. Well, actually, it's the same. I was on a commission basis, which I get paid when I sell. So if I -- every month I get my commission statement.
Q. I see. Now, did you at any time in the past two or three years, operate through an assumed name or any kind that you filed?
A. No. The only name was Jack Robinson.
Q. And during this period, did you sell -- I picked three years simply as a convenient period, Mr. Robinson. If there is a different period that would be more relevant, you tell me, okay?
MR. SHELDON: I'm going to object as to Mr. Robinson

telling anything unless he asks the question. He must ask the question and then Mr. Robinson will give the answer. Mr. Robinson is not going to sit on the stand and tell him.

MR. GARDNER: Your Honor, he will answer only the questions I ask.

THE COURT: Overruled. Repeat the question, Mr. Gardner.

BY MR. GARDNER:

Q. During the period, say, of three years prior to filing bankruptcy, did you sell meats for anyone other than New York Commodity?

A. That's right.

Q. And who?

THE COURT: You will have to speak up.

THE WITNESS: Yes.

BY MR. GARDNER:

Q. And who else besides New York Commodities did you sell canned meats for during this three year period?

A. Well, I sold exclusively for them.

Q. You sold exclusively --

A. Exclusively for them.

Q. Okay. Now, did you have some kind of an agreement with New York Commodities with respect to how you

would operate or how you would conduct your business?

A. Yes.

Q. Was there anything in writing that you know, between you and New York Commodities?

A. I've been with them for eighteen years.

Q. Did you have any written agreement with New York Commodities at any time, sir, which you signed or which they signed?

A. I don't recall anything.

THE COURT: You will have to speak up.

THE WITNESS: I don't recall any agreement that I have.

BY MR. GARDNER:

Q. You have no present recollection of any written understanding between you and New York Commodities, is that correct?

A. That is correct.

Q. Who are the principals in New York Commodities who would be familiar with your relationship with that company?

A Vice president, Mr. --

Q. Name?

A. Zeisel.

Q. And what's his first name?

A. William.

Q. William. And who else, please?

A. Well, you have the -- Mr. Jadlon.

Q. How do you spell that?

A. J-A-D-L-O-N.

Q. J-A-D-L-O-M, is that right?

A. N.

Q. N. And what was his position with the company?

A. He's the president.

Q. Now, did there come a time in December of 1969 when you had occasion to borrow money from the Manufacturers and Traders Trust Company of this city?

A. Yes.

MR. GARDNER: Would you mark this for identification, please?

(Whereupon three documents were then received and marked Exhibits 1, 2 and 3 for identification.)

BY MR. GARDNER:

Q. Mr. Robinson, I show you Exhibit 1 for identification and ask you if that bears your signature?

A. Yes.

Q. And is that a note dated December 12th, 1969 for

thirty-five thousand dollars which you delivered to Manufacturers and Traders Trust Company?

A. Yes.

Q. And at the time that you delivered that note, did you receive that sum of money?

A. I don't recall if I received it, thirty-five thousand.

Q. What did you receive, or how did it happen, in other words?

A. I think there was an old balance and then it was renewed and then it became thirty-five. Then I did not receive thirty-five thousand.

Q. Did you ever receive any new money at all?

A. Yes, I did receive new money, but not thirty-five thousand.

Q. Okay, fine. You had carried loans with the Trust Company for some time, is that right?

A. That is correct.

Q. Now, I show you Exhibit 3 for identification --

MR. SHELDON: Excuse me, is that Exhibit 2?

BY MR. GARDNER:

Q. I haven't used it yet. I will be referring to it in a moment, counsel. And attached to Exhibit 3 which purports to be a letter to you from Mr. Spitzmiller.

Did you see that?

A. Yes.

Q. Did you receive the original of that letter?

A. I believe I did, yes.

Q. And attached to that is a loan agreement which is four pages. And, I ask you if that bears your signature?

A. Yes, it is.

Q. And beneath that is a security agreement dated December 12th, 1969, and ask you if that bears your signature on the last page?

A. Yes, it does.

Q. And then further on the same packet of papers, attached to Exhibit 3 is another letter purportedly addressed to you and bearing your signature on the second page, is that correct?

A. That is correct.

Q. And still further in the same packet is a security agreement dated January 16th, 1969 with your name at the top and also bearing your signature, is that correct?

A. That is correct.

Q. And then there's finally another security agreement

dated January 10th, '69 which I believe ~~bearing~~ bears your signature at the back, is that correct?

A. That is correct.

Q. Now, Mr. Robinson, at the time you signed Exhibit 1 in December of 1969, did you understand that you were entering into an arrangement with the Trust Company whereby they were obtaining security and certain collateral for you?

A. I did not. When I signed this note here, Mr. Spitzmiller gave me all these papers and I signed it all. I didn't -- I never questioned his -- what it was all about, because in the past, I never had that experience. I came into the bank and always got loans and that was the first time we entered this kind of agreement. So he gave me all the papers to sign which I did.

Q. And you did not ask Mr. Spitzmiller what you were signing?

A. No, I didn't.

Q. Well, Mr. Spitzmiller told you, didn't he that he was taking a security interest in your collateral, did he not?

A. Well, he did say -- because he represented a paper to

me.

Q. He told you what was in the paper, right?

A. I didn't understand the whole thing. He just gave it to me, sign it here and that's it. At the time I needed the money and I didn't question him before, because we had had transactions before and we never had any signing of any kind of papers. I just signed. He said just sign it here, this is the formality of the bank, which I did.

Q. Did Mr. Spitzmiller not explain to you that this was creating a chattel mortgage in your interest in your inventory?

A. Not that I recall.

Q. Not that you recall. And did he not explain to you at some point that you were giving a security agreement in any of your equipment including a 1969 Pontiac? You knew you were giving a chattel to Mr. Spitzmiller, didn't you?

MR. SHELDON: Your Honor, before the Bankrupt answers the question, I think Mr. Gardner should state what's included in that package which is Exhibit 3, the security agreement dated January 16th of '69.

MR. GARDNER: Your Honor --

MR. SHELDON: Could I please finish, Mr. Gardner. I think I have a right.

MR. GARDNER: Yes, counsel.

THE COURT: Just state your objection, Mr. Sheldon.

MR. SHELDON: The security agreement of January 16th, of '69, and the security agreement of December of '69. I would appreciate if Mr. Gardner would tell the witness what security agreement he's referring to, because there is no security agreement of December of '69 on any automobile.

THE COURT: All right. Would you specify which security agreement you're referring to, Mr. Gardner?

BY MR. GARDNER:

Q. I will, your Honor. Mr. Robinson, look at the papers with me as we go along in the questioning if you will. You observed there's a December, 1969 security agreement in inventory and personal property of every nature, is that not correct?

A. That's right.

Q. And you signed that document in December?

A. That's right.

Q. And Mr. Spitzmiller explained to you that they were taking a lien on goods, did he not?

A. I don't recall that. He explained -- as a matter of fact, I never questioned him. He gave me the paper to sign and said, "It's all ready for you," which I did.

Q. You had had some discussions with Mr. Spitzmiller before these papers were prepared, hadn't you? Had you not come in and told him you wanted to borrow some money?

A. Well, yes, that's true.

Q. And did you not explain what your financial circumstances were?

A. Yes.

Q. That necessitated this loan?

A. Yes.

Q. And what was your explanation that you presented to Mr. Spitzmiller? Why did you -- the December of 1969, what did you tell him was the reason why you needed to borrow any money?

A. That I needed money to buy for some more merchandise.

Q. Did you buy some more merchandise?

A. Yes.

Q. And who were you going to buy the merchandise from?

A. From one of my accounts.
Q. From one of your accounts?
A. Yes.
Q. And which account would that be?
A. There was Frank Wardynski.
Q. Is he related to the Wardynski Sausage Company?
A. Right, that is correct.
Q. And why were you going to buy this material from Wardynski's? Was that part of your business?
A. Well, actually, it was not part of my -- the only reason that I needed to help out one customer to the other, so I could make my commission so I didn't lose out one of the sales that I had anticipated.
Q. And how much were you going to be paying Mr. Wardynski?
A. Well, there was several deals. That there was eight thousand, nine thousand, something around that neighborhood. Which I took one merchandise and sold to another customer.
Q. In other words, in the course of your business enterprises, Mr. Robinson, you would act as you put it as a salesman for this company in New York City, is that correct?
A. That is correct.

Q. But you would also individually, you would buy back meats from some of your customers?

A. That I should not lose out my commission by the customer, to return the merchandise back to anticipate that I should get my full commission. I was reselling it to one customer to the other.

Q. And did you keep any records with respect to these transactions in December of 1969?

A. Yes, I did.

Q. And where are they? Are they with you today?

A. Not -- no, I don't think they are.

Q. What type of records do you have Mr. Ward -- or, Mr. Robinson?

THE COURT: Please speak up, Mr. --

THE WITNESS: Invoices that I sold to. That I sold to the customer from Wardynski to somebody, from the other customers.

BY MR. GARDNER:

Q. You have invoices for the transactions where you re-sold the meat to someone else, is that correct?

A. Yes.

Q. And do you have any correspondence or agreements between you and Mr. Wardynski?

A. Yes.
Q. And you have copies of all those documents, is that correct?
A. Yes.
Q. And, as a matter of fact, this practice of buying back inventory was a practice which you engaged in with reasonable regularity with various people, isn't that correct?
A. I don't understand your --
Q. Mr. Wardynski wasn't the only one?
A. There's a few more.
Q. Who were the other ones?
A. I was taking from Wardynski to -- to Pasco Meat and sold it to them. And sometimes I had Pasco Meat to somebody else.
Q. And who else would this be?
A. Well, there are several, Pasco, Wardynski, and there was Niagara Frontier Services.
Q. So that in fact, you would carry some inventory from time to time when you repurchased and were carrying it until you could sell it to someone else, is that correct?
A. Yes.

Q. Have you filed your income tax return for the year 1969 and 1970?

A. Yes, I have.

Q. And do you have copies of those returns?

A. Yes.

Q. And are they with you today?

A. I don't believe so.

MR. GARDNER: Might I assume that when the witness says he does not belive so, that counsel does not have them available?

MR. SHELDON: That is correct. We will provide the records, your Honor. No problem.

THE COURT: All right.

MR. SHELDON: They weren't requested at the first meeting.

BY MR. GARDNER:

Q. I'm not saying they were, of course, your Honor. Mr. Robinson, I show you a promissory note dated January 16th, 1969. That note you observe is in the amount of three thousand three hundred dollars. Do you see that?

MR. SHELDON: Is that an exhibit?

BY MR. GARDNER:

Q. This is Exhibit 2. Does that note bear your signature?
A. Yes, it does.
Q. And this is payable in equal monthly installments and the record seems to indicate that there's a balance of one hundred thirty-seven dollars and fifty cents owing on that note. Is that in accordance with your understanding?
A. Yes.
Q. There is a balance owing on that note, is that correct?
A. Yes, I believe so.
Q. And in connection with the giving of that note or about the statement you gave, did you give this security agreement covering equipment and the automobile which is dated that same day and attached to Exhibit 3?
A. Yes.
Q. And that refers to a 1969 Pontiac, is that correct?
A. That's correct.
Q. Where is that automobile now?
A. The M&T I believe has it.
Q. Has the M&T repossessed it?
A. Yes.
Q. And at the same time, January 15th, '69, did you take or did you give the M&T an inventory or accounts

receivable security agreement and that also is attached to Exhibit 3, is it not?

A. Yes. That's for the car.

Q. No. That covers inventory. Your answer is yes you did give that security agreement back in January of '69, didn't you?

A. Right.

Q. So that the security agreement that you gave in December was an additional one but not the first one, was it?

MR. SHELDON: That's a conclusion as to Mr. Gardner's --

THE COURT: Overruled.

MR. GARDNER: The witness has already acknowledged the later agreement.

MR. SHELDON: The word additional is the question.

BY MR. CARDNER:

Q. You had given a security agreement in January before you gave that security agreement in December that we spoke of earlier, hadn't you, Mr. Robinson?

A. I don't recall.

THE COURT: Pardon?

THE WITNESS: I don't recall. Is it the -- this is the first one that you showed me before.

BY MR. CARDNER:

Q. That is the agreement dated in January of 1969 that you are looking at the moment?

A. Right.

Q. And before you were looking at one dated in December of '69?

A. They are the same type of forms. aren't they?

Q. Well, not exactly, they're similar forms. The fact is --

A. I don't recall. Well, I don't recall, but my signature is on it there.

Q. The fact that you would have been giving the M&T security agreements during the year 1969, you were aware that you were signing these documents and not just notes?

A. I was not aware.

Q. You weren't aware that you were signing --

A. I was aware that I was signing it, but I wasn't aware of all what I was signing.

Q. I see. Again, looking at Exhibit 3 and drawing your attention to the letter dated December 12th, '69 to you and signed by you?

A. Right.

Q. Do you remember having that letter submitted to you by Mr. Spitzmiller?

A. Yes. I got a copy of that.

Q. And you signed it in his presence, didn't you?

A. In his presence is correct.

Q. And you had the opportunity to read that at the time?

A. No, I did not.

Q. You did not read it, in fact?

A. No, not at the time when I signed it, I didn't read it at all. I never had to read in the past. I was doing business with him for M&T for five years and it never entered my mind that I would have to read anything. I signed because it was all done.

Q. Do you recall having advised the bank that you were involved in business as a proprietorship? Ever remember those words in conversation between you and Mr. Spitzmiller?

A. No. I don't recall having mentioned that.

THE COURT: Please speak up, Mr. Robinson.

BY MR. CARDNER:

Q. Now, when you carried canned meat which you repurchased from your customers, would you carry this inventory for a period of time or did you immediately resell it to

someone else, Mr. Robinson?

A. For a short period of time.

Q. And was this a type of transaction that you were always engaging in from time to time, or did it just happen on occasion?

A. On occasion.

Q. So it's fair to say that you did not, in fact, own canned meats except on rare, reasonably rare occasions when you would just repurchase it to sell to someone, is that correct?

A. That's correct.

Q. And on occasions when you had repurchased the meat and you were taking possession, where would you store it?

A. Well, it was transferred from one customer to the other only in a matter of time.

Q. Where was the meat physically held?

A. In the -- in the cold storage.

Q. And where was that?

A. That's on 197 Scott Street.

Q. Was that Artic --

A. Artic Freezer.

Q. And is that where you carried the meat which was owned

by the New York Commodities?

A. Well, that's what we have the account with. We used to carry the storage there.

Q. Did New York Commodities withhold your commissions for tax purposes?

A. No. I was strictly under a commission basis.

Q. Is it more accurate to say you were in fact, an individual contractor, individual businessman and they would pay you commission on whatever you sold for them or were you in fact an employee, do you know?

A. Well, I would call a salesman independently, yes.

Q. You were?

A. Yes.

Q. You understood yourself to be an independent salesman, is that right?

A. Right.

Q. Do you recall, as a matter of information, whether you filed an estimated income tax return, for example, during these years?

A. Yes.

Q. Do you know what an estimated income tax return is? Do you know what I mean?

A. By the quarter, right?

Q. Yes.
A. Yes.
Q. What was the amount of your income during the year 1970, Mr. Robinson, approximately? If you recall?
A. I don't recall offhand.
Q. Well, you recently filed your income tax return for 1970, have you not?
A. Yes, I did.
Q. And can't you tell us within a general range what your income was as shown on that return?
A. I believe -- let me -- it was about eleven thousand dollars.
Q. Eleven thousand dollars?
A. Yes.
Q. And was that about the same amount that you earned in 1969?
A. '69, I believe it was more.
Q. Can you tell us approximately how much it was in '69?
A. Twenty-one thousand, I believe.
Q. Twenty-one thousand?
A. Yes.
Q. And was that again, if you can recall, was that about as high as your income level has got? In '68, would it

have been more than twenty-one or would it have been less?

A. '68 it was more, I believe.

Q. More than twenty-one?

A. Yes.

Q. Excuse me, strike that. More than twenty-one thousand in '68, is that correct?

A. That's right.

Q. Do you recall how much it was in '68, approximately?

A. Not offhand. It was a little more.

Q. A little more. Would it have been over thirty?

A. No, I don't think so.

MR. GARDNER: Would you mark this, please?

(Whereupon two documents were then received and marked Exhibits 4 and 5 for identification.)

BY MR. GARDNER:

Q. From time to time, did you give financial statements to the M&T?

A. Yes, I did.

Q. They required that you file a financial statement every year when you had debts owing, did they not?

A. Yes.

Q. And how would you arrange to have these statements given? Did you receive blanks in the mail? Did you make them out and send them in or deliver them or what? I'm talking about the last three years.

A. Delivered myself.

Q. You delivered them yourself?

A. Yes.

Q. You made them out and signed them before you took them in, is that right?

A. Yes.

Q. So that when they arrived at the bank you had completed them and they had your signature on them, is that correct?

A. That's right.

MR. GARDNER: Please speak up, Mr. Robinson. He has to hear you so this record will be complete.

THE COURT: And your attorney has to hear you, Mr. Robinson, please speak up.

BY MR. GARDNER:

Q. I show you Exhibit 4 for identification, and is that a financial statement which you gave to the bank showing your condition as of May of 1970?

A. Yes.

A. Please examine it and note that that is your signature, is that correct?
A. That's correct.
Q. And in accordance with your previous answer, is it correct that you had made this out at home and completed the information and signed it and then you delivered it directly to the bank?
A. That's correct.
Q. Is that correct? And did you give them any additional information orally at the time you delivered it or just hand them the statement?
A. Just the statement.
Q. Okay. Now, on the statement I note that you carry net sales of eighty-nine thousand four hundred dollars for the period indicated, is that correct?
A. That is correct.
Q. But you weren't selling anything yourself at all, were you?
A. Yes, I did. I told you that I had to sell it from one customer to the other. That I should not lose out my commission.
Q. Did the eighty-nine thousand four hundred dollars represent transactions where you had purchased the meat--

A. Right.
Q. -- from various -- of your customers?
A. That's correct.
Q. And you had resold them to someone else, is that correct?
A. That's correct.
Q. Well, you show the cost of the merchandise sold as being forty-four thousand two hundred dollars, is that correct?
A. That is correct.
Q. And I would assume that means that you had to pay forty-four thousand two hundred dollars to buy the meat from people like Mr. Wardynski?
A. Right.
Q. So that you could turn around and sell it and make more than one hundred percent profit for eighty-nine thousand?
A. No, I could not sell it for eighty-nine thousand. This is all gross sales which nets out -- actually in some of these instances, there was no profit at all. That was more or less like an accommodation.
Q. Sure. As a matter of fact --
A. No one hundred percent.

Q. Of course there wasn't. When you had to buy meat from Mr. Wardynski and in order to protect your commissions--
A. Right.
Q. You very often would be very happy, I assume, if you could sell it in a short period of time for what you had to pay Mr. Wardynski for it, wouldn't you?
A. No, not quite right.
Q. Not quite right. You tell me what is right? How did it work if you sell it to Wardynski?
A. I worked as a commission man. I get paid so much per pound. So, when you buy it back from Wardynski, you resell it to somebody else. A lot of times practically--merely accommodation to keep the customer happy, that the merchandise should not be returned.
Q. Many times you didn't have any profit at all on that transaction?
A. Very, very little profit.
Q. Did you ever have a situation where you bought from Mr. Wardynski or someone like him and you resold it to someone else where you made a substantial profit?
A. Very little profit. I don't know what you mean by substantial. In the meat business, you see, you work very low, quarter and a half percent.

Q. You never had a big profit on those resale transactions, did you?

A. No.

THE COURT: Your answer?

THE WITNESS: No.

BY MR. GARDNER:

Q. So, going back to Exhibit 4 for identification, just to try and understand this, we have gross sales of eighty-nine thousand four hundred. We show cost of merchandise sold of forty-four thousand two hundred. That's correct? I'm reading correct, am I not?

A. Yes.

Q. So, selling expense of five thousand nine hundred, right?

A. Right.

Q. And then I believe we show a forty-five thousand two hundred dollar figure which I assume is the difference between eighty-nine thousand four hundred and these other two figures, is that right?

A. Right.

Q. Then we show a delivery expense of five hundred dollars--

A. That is correct.

Q. -- is that correct? We show general expense of one

thousand one hundred dollars, is that right?

A. That's correct.

THE COURT: Mr. Robinson, speak up, please. The reporter has to hear you. We have to have a record here, and your counsel has to hear you.

BY MR. GARDNER:

Q. And then we get down to what appears to be total expense of seven thousand five hundred dollars, is that right?

A. That's right.

Q. And that, I gather, is the total of these three figures, five thousand nine hundred, five hundred and one thousand one hundred?

A. That's correct.

Q. So, you have a total profit on these transactions before taxes of thirty-seven thousand seven hundred dollars?

A. Right.

Q. Is that right?

A. Correct

Q. According to the financial statement you delivered, right?

A. Right.

Q. But you never had a profit like that, did you, during the period on these retail transactions? Never in the whole wide world did you have aseventy or seventy-five percent profit on those resales, did you?

A. No.

Q. So, these figures are not correct, are they? They are not correct. They can't be correct, can they, Mr.Robinson? Are these figures correct, or aren't they? Will you please answer the question, Mr. Robinson.

MR. SHELDON: Your Honor, I think that --

MR. GARDNER: Your Honor, this record should show --

THE COURT: Let Mr. Sheldon state his objection. Mr. Sheldon.

MR. SHELDON: I would like to know which figure is not correct that Mr. Gardner is --

MR. GARDNER: I think the witness --

THE COURT: He's asking if the figures are correct.

MR. SHELDON: Some of them are and maybe some are --

THE COURT: The witness may answer. I will overrule the objection and direct the witness to answer the question.

BY MR. GARDNER:

Q. Are those figures correct? Do they correctly arrive at the profit as shown?

A. I guess some of them are correct and some of them isn't.

Q. All right. Which ones are correct and which ones are not?

A. I can't tell you.

Q. You can't tell me at this point, can you? Is it fair to say that during the twelve month period ending April 30th, 1970, you wouldn't have made more than possibly five thousand dollars maximum profit on the resale type transactions that we have been discussing?

A. No.

Q. That isn't --

A. I don't think so. I don't believe.

Q. You don't believe what?

A. That I made five thousand dollars.

Q. You don't believe that you would have made five thousand dollars? So, if we give you the benefit of a doubt, and say five thousand dollars is the maximum, it probably was, in fact, less than that, wasn't it?

A. I would say much less.

Q. Much less than five thousand dollars profit. Well, let's look at Exhibit 5 which is the financial statement you gave for the period ending April 1969, is

that correct?

A. Yes.

Q. And that has your signature on it also, does it not?

A. Yes.

Q. And on the second page, we have a similar statement, similar for the period of ten months ending April 30th, 1969. Do you see that?

A. Yes.

Q. Now --

THE COURT: Can you hear Mr. Sheldon?

MR. SHELDON: No.

THE COURT: It's important that counsel hear you, Mr. Robinson.

BY MR. GARDNER:

Q. During this period we show total sales of seventy-eight thousand two hundred dollars, don't we?

A. Right.

Q. By the way, am I correct in assuming that this statement was also prepared by you?

A. Correct.

Q. And delivered to the bank after it had been fully completed?

A. Right.

THE COURT: Mr. Robinson?

THE WITNESS: Right.

BY MR. GARDNER:

Q. Now, as compared to the total sales of seventy-eight thousand, you show cost of merchandise sold of thirty-five thousand five hundred, is that correct?

A. That is correct.

Q. That's what the document states, but, in fact, you did not purchase goods for thirty-five thousand and resell them for seventy-eight, did you?

A. No.

Q. So, that figure, one of those figures is wrong, is it not?

A. One or both of them are wrong.

Q. Am I correct?

A. Correct.

Q. Speak up, Mr. Robinson, please. We show a gross profit according to this statement of forty-two thousand seven hundred dollars, is that correct? That's the figure you've got on your statement?

A. That's correct, yes.

Q. And then you have additional expenses, three items, selling expense, delivery expense and depreciation

totaling seven thousand five hundred dollars, is that correct?

A. That's correct.

Q. And we show here a net profit of thirty-five thousand dollars, is that correct?

A. Before taxes, right.

Q. Before taxes, yes. And then this is a statement of your independent transactions, and doesn't include the commission purchases or commissions that --

A. It does include the whole thing.

Q. This includes the whole thing?

A. That's right. This is the commission with the -- with the sales, total.

Q. Well, on the prior statement you indicated that this did not include the commissions. Did you change your practice from year to year?

A. It's the same practice, same thing.

Q. Do I understand, Mr. Robinson, that you are changing your testimony with respect --

MR. SHELDON: You're not changing your testimony.

BY MR. GARDNER:

Q. With respect to Exhibit 4? Mr. Robinson, did you have an accountant during these periods of time?

A. Yes, I did.
Q. And who was that accountant, please?
A. Mr. Lejant.
Q. What is the name? How do you spell it?
A. L-E-J-A-N-T.
Q. And what is his first name?
A. Bernard.
Q. And where is his office?
A. New York.
Q. New York City?
A. Right.
Q. Do you know where in New York City?
A. 52 West 42nd Street.
Q. And does this gentleman still have records of your affairs so far as you know?
A. Yes, he does.
Q. Referring to Exhibit 5, for identification, is it fair to say that during the ten month period ending April 30th, 1969, the maximum profit which you would have realized on resale of meats which you had purchased would not have exceeded five thousand dollars?
A. That's correct.
Q. And in fact, in the following year it might have been

quite a bit below that, is that not true?

A. That's correct.

Q. Now, Mr. Robinson, you owned property at 34 Carpenter Avenue, is that correct?

A. That's right.

Q. And you owned that jointly with your wife?

A. That's correct.

Q. That property was purchased in 1964, is that right?

A. That's right.

Q. For forty-five thousand dollars?

A. No.

Q. For how much?

A. Thirty-two five.

Q. Thirty-two thousand five hundred dollars. And did you at any time in the future, put additional improvements in the house of any kind?

A. No.

Q. Your answer is no?

A. Yes.

Q. Would you please speak up, Mr. Robinson?

A. No.

Q. On Exhibit 5 for identification, you list this house, do you not? This is the statement given in April, 1969,

is that right?

A. That's correct.

Q. By the way, did you ever have occasion to have the house appraised or valued by anyone?

A. No, not that I recall.

Q. And has the house ever been listed for sale in the past six years?

A. No.

Q. Have you ever received an offer from anyone?

A. No.

Q. To purchase the house? To your recollection, have you ever heard anyone express an opinion as to -- to you as to how much the house was worth?

A. Somebody said to me it would be worth so much.

Q. And who was that?

A. Private individuals.

Q. And do you recall who any of them were?

A. Not that I remember.

Q. You don't remember?

A. It was private, some people that --

Q. Referring to Exhibit 5 for identification. You show the purchase price for that house as being forty-five thousand dollars, don't you?

A. The regular cost of the house when the house was -- cost thirty-two five.

Q. On the third page where it says date of purchase and price paid, you show 1964 and forty-five thousand dollars, is that correct?

A. That's correct, it shows that.

Q. Well, that's the figure that you put on the statement, isn't it?

A. Yes, right.

Q. That was a false figure?

A. Somebody told me that the house is worth more than it is, you know.

Q. Yes. But later on, it shows an evaluation of the house as being fifty-one thousand five hundred, doesn't it?

A. That's right.

Q. And that's the value that you put on the statement, isn't it?

A. That's right.

Q. So when it called for the statement of the purchase price, you falsified that figure, didn't you?

A. I wouldn't say I falsified. I just didn't know how to put it into a figure.

Q. You put in a false figure?
A. I wouldn't say it's a false figure. Somebody told me at the time that the house was worth more money.
Q. Mr. Robinson, step by step now. What is the figure fifty-one thousand five hundred dollars? Why was that put on the statement? Because that's what you thought the house was worth, is that not correct?
A. That's right.
THE COURT: Your answer?
THE WITNESS: Yes.
BY MR. CARDNER:
Q. The figure forty-five thousand dollars, what was that put on for? Because that's what you were saying was the price you paid for the house, is that not correct?
A. I think there was a mistake on my part.
Q. There was a mistake on your part?
A. In '64, the house -- when I bought the house I paid thirty-two five.
Q. You've never had any confusion in your mind as to what the purchase price of your house was, have you? You've always remembered that you paid thirty-two five for that house, have you not, Mr. Robinson?
A. That's correct.

Q. So when you put forty-five thousand dollars on Exhibit 5, you did so for the purpose of stating a purchase price which was in fact not true, is that not correct? Yes or no, Mr. Robinson?

A. I don't quite understand the whole thing here.

Q. You do understand that you show forty-five thousand dollars as the purchase price, don't you? And you knew -- is that correct? You do state that as the purchase price, did you not?

A. That's right.

Q. And yet, you knew at the time that the real purchase price was thirty-two thousand five hundred, is that not correct?

A. That's what I purchased the house for, thirty-two five, '64.

Q. And in 1969, when you made out this statement, you knew that you had paid thirty-two five, is that not also correct?

A. Yes, I did.

Q. Okay. And on Exhibit 4 which is the statement given the following year, you again show the purchase price as being forty-five thousand dollars, is that not correct?

A. Yes.

Q. Mr. Robinson, why did you lie about the purchase price of your house? Your answer?

A. I don't think I lied. The house was purchased in '64.. I paid thirty-two five.

Q. Let me restate the question. Did you put an incorrect purchase price on the financial statement of forty-five thousand dollars?

A. Well, at that time when I talked to a few people they told me this house, they think it's worth about in the neighborhood, forty-five thousand. So that's what I put in the figure.

Q. Well, why did you put down the value of the house then as being fifty-three thousand five hundred dollars on your 1970 statement if they told you they thought it was worth forty-five thousand? Mr. Robinson, isn't it a fact that you wanted your financial statement to show as much worth as possible, and that you showed a higher price in order that the bank would be more secure or feel more secure? Isn't that in fact the case?

A. Not quite.

Q. What is the fact? May I have a direction of the Court

that the witness answer the question?

THE COURT: Yes, please answer it, Mr. Robinson.

THE WITNESS: What is your question?

BY MR. GARDNER:

Q. Why did you put the figure forty-five thousand on there as the purchase price of that house when in fact you knew it had been thirty-two thousand five hundred?

A. I was told at this time that the house is worth forty-five thousand.

Q. Why then, referring to Exhibit 5, did you show the value of the house as being fifty-one thousand five hundred dollars if you had the opinion that it was only worth forty-five thousand? Do you have an answer, Mr. Robinson?

A. No, I can't answer that.

MR. GARDNER: Would you mark that, please?

(Whereupon a document was then received and marked Exhibit 6 for identification.)

MR. GARDNER: I show you Exhibit 6 which purports to be a copy of a financial statement you gave as of July 1968. Do you see a reproduction of your signature?

MR. SHELDON: Don't answer the question. I'm going to object to that. That's a photocopy. I want to know where the original is before you introduce any photocopy, Mr. Gardner. It could be pasted together. I have no idea.

MR. GARDNER: Excuse me?

THE COURT: That is a photocopy?

MR. GARDNER: This is a photocopy as part of the regular records of the Manufacturers and Traders Trust Company which I have taken from the M&T folder. At the moment, I don't know where the original is or whether it's in existence.

MR. SHELDON: I'm going to object to you asking any questions pursuant to the photocopy. As the Court is well aware of, they could take the signature off of another document and make copies. And, unless they can produce the original, I'm going to object to any questions with respect to that document.

MR. GARDNER: Your Honor, counsel as in any lawsuit merely asks for questions of information.

THE COURT: Overruled. Ask the witness if he recognizes the document?

BY MR. GARDNER:

Q. I show you what purports to be a copy of a financial statement as of July of 1968. I draw your attention to the second page. Do you observe your signature or a reproduction of your signature on that page?

A. Yes, I do.

Q. And do you recall having given a financial statement in 1968 just as you did in the two subsequent years we referred to?

A. This one was '69, here.

Q. Exhibit 5 is in '69 and Exhibit 4 is 1970?

A. This is '68.

Q. And you gave one in '68 too, did you not?

A. Yes, I believe so. That is correct.

Q. And in '68, this is on Exhibit 6, you also show the same real property as having a purchase price of forty-five thousand, do you not? This time you showed a value of forty-nine thousand, is that not correct?

A. That's correct.

Q. So that during the three years that we are referring

to, the amount of the purchase price remained the same, forty-five thousand dollars, but the figure for the evaluation of the property went up gradually, is that correct?

A. Could have went up. I think with this figure here --

Q. Just talking --

A. A mistake on my part.

Q. The forty-five thousand?

A. Forty-five thousand, yes.

Q. You're sure you made a mistake?

A. Yes.

Q. Now -- but you do agree with me that the document shows that the purchase price of forty-five thousand remained the same, but your evaluation rose in each instance, is that correct? From forty-nine thousand to fifty-one thousand five hundred to fifty-three thousand five hundred, do you see that?

A. Yes, I do.

Q. All right. Mr. Robinson, when was the last time when you repurchased any canned meats from any of your customers?

A. 1970. During the summer.

Q. During the summer of 1970. And can you tell us who

it was that you purchased from at that time?

A. I don't recall offhand. I'll have to check that out.

Q. Do you have records of the purchases?

A. Yes, I do.

Q. And all the meat was resold, was it?

A. That's correct.

Q. And do you know to whom it was resold of that last transaction?

A. I will have to check that out.

Q. You don't have any present recollection?

A. No, not at the moment.

Q. When was it that you last had any accounts receivable owing to you by other parties?

A. Last summer, 1970.

Q. Summer of 1970?

A. That's right.

Q. Do you know what the amount of any such accounts receivable would have been in general terms?

A. I don't remember offhand.

Q. Will you give us a range? Was it over ten thousand dollars?

A. I think so. Over ten thousand, yes.

Q. Would it have been over twenty thousand dollars?

A. Yes, I think so.

Q. Could it have been over thirty thousand?

A. I'll have to check to make sure. I don't remember offhand. I think it's over twenty.

Q. It was over twenty, but you're not sure about thirty, is that correct?

A. That's correct.

Q. And I gather that you collected all of those accounts receivable, is that right?

A. Yes, that's correct.

Q. And what happened to the money collected, do you know?

A. I beg your pardon?

Q. What happened to the money when you collected it?

A. It was used up.

Q. For what purposes?

A. For my living expenses.

Q. For living expenses?

A. That's right.

Q. And you had none of it left by the end of this year, did you?

A. That's correct.

Q. Do you recall having a conversation with Mr.

Spitzmiller on January 13th of this year? Around January 11th of this year, excuse me. Do you recall Mr. Spitzmiller was inquiring with respect to the loan and was asking your financial --

A. Yes, I believe.

Q. Do you recall that?

A. Yes, I believe I do.

Q. Do you remember telling Mr. Spitzmiller at that time that you needed a little more time to collect your accounts receivable?

A. Not that I recall.

Q. You don't recall that?

A. I don't recall that.

Q. Will you speak up, please?

A. I don't recall that.

Q. Mr. Spitzmiller was pressing you for payment, was he not?

A. Yes, he was.

Q. And were you not giving him an explanation as to why you could not pay right away?

A. I was under extreme difficulties at that time.

Q. And you told him that, is that correct?

A. That's right, I believe so.

Q. You also told him that you had some accounts receivable, did you not?
A. I don't recall.
Q. You don't believe so?
A. I don't recall.that. That I ever --
THE COURT: That what?
THE WITNESS: That I mentioned it to him.
BY MR. GARDNER:
Q. Well, perhaps I can help your memory. Do you remember having told him that Niagara Frontier Services owed you five thousand two hundred dollars? Niagara Frontier Services, do you remember that?
A. No, I don't believe so.
THE COURT: Your answer?
THE WITNESS: I don't believe so.
BY MR. GARDNER:
Q. You did not tell him that, is that what you're saying?
A. I don't recall ever having mentioned that.
Q. Is it that you don't recall, or are you telling me you never told him you had such an account receivable?
A. I never had them.
Q. And you never told him that you did have, did you?
A. Are you asking if I had any receivable?

Q. I'm asking, Mr. Robinson, whether you told Mr. Spitzmiller on January 11th of this year --

A. Yes.

Q. -- that you had accounts receivable payable to you?

A. No, I did not have anything.

Q. And you never told him that you did have any payable, did you?

A. No.

Q. So that the record is clear. When you had conversations with Mr. Spitzmiller on January 11th of this year, you did not tell him that you had outstanding accounts receivable?

MR. SHELDON: Your Honor, I'm going to object. He's answered the same question four times already.

THE COURT: Overruled.

BY MR. GARDNER:

Q. Is that correct?

A. That's correct.

Q. And there's no question about that in your mind?

A. None at all.

Q. There's no possibility that this answer you just have given could be in error?

A. No.

THE COURT: Your answer?

THE WITNESS: No.

BY MR. GARDNER:

Q. All right. I'm going to give you a list of accounts and amounts which Mr. Spitzmiller says you told him on that day were owing. I'm going to ask you after you hear this to search your recollection and to tell us whether Mr. Spitzmiller is in error in giving me this information. Will you do that?

A. I will try.

Q. Mr. Spitzmiller says that you told him on January 11th that you had an account receivable payable to you by Niagara Frontier Services of five thousand two hundred dollars. You did not make that statement to Mr. Spitzmiller, is that correct?

A. That's correct.

Q. He further says that you indicated that you had mentioned owing to you by Buffalo Butter and Egg in the amount of three thousand five hundred dollars. Did you give that information to Mr. Spitzmiller on January 11th of this year?

A. I don't believe so.

THE COURT: I didn't hear you.
THE WITNESS: I don't believe so.
BY MR. CARDNER:
Q. Is there any possibility that you did?
A. I don't think so.
Q. You say I don't believe so and you say I don't think so. A moment ago you said you definitely did not on another one. Are you unsure at this point, Mr. Robinson?
A. Well, I would say I'm almost sure.
Q. Mr. Spitzmiller further says that you indicated that you had two thousand eight hundred dollars payable to you by Park Edge. Is that some type of supermarket or something?
A. Yes, it is.
Q. And did you make that statement to him on that day? Did you tell Mr. Spitzmiller on January 11th that that account receivable was owing?
A. There was no accounts receivable.
Q. I understand that.
A. I told you that.
Q. And did you not tell Mr. Spitzmiller on that --
A. How could there be any outstanding when I just told

you that there isn't any.

Q. I'm asking not whether it was in fact outstanding, Mr. Robinson. I'm asking whether you told Mr. Spitzmiller it was outstanding. Do you understand?

A. Yes, I do.

Q. And you have indicated before that you definitely did not tell Mr. Spitzmiller that any accounts receivable were outstanding. Do you wish to change that answer or is that answer still correct?

A. How -- I don't quite follow you.

Q. Yes or no? Did you tell Mr. Spitzmiller on January 11th that you had accounts receivable accounts?

MR. SHELDON: Your Honor, he's asked that question over and over again. Now --

THE COURT: Overruled.

MR. GARDNER: Your Honor, might I have just a moment, please?

THE COURT: Off the record.

(Discussion off the record.)

BY MR. GARDNER:

Q. There's no question for the record that you gave no such information to Mr. Spitzmiller on that day, January 11th --

A. That's right.

Q. -- is that correct? Okay. Now, forgive me if I continue going through the list, because I want you to have all the information I have, Mr. Robinson.

A. Okay.

Q. Okay. I want you at the conclusion of the list, to again have you tell me whether you did or did not give this information to Mr. Spitzmiller. The next item that Mr. Spitzmiller mentions is Malecki Sausage, four thousand nine hundred dollars. Did you tell Mr. Spitzmiller that you had that account receivable owing?

A. No.

Q. The next item is Twin Fair, four thousand five hundred dollars. Did you give that information to Mr. Spitzmiller?

A. I talked to Mr. Spitzmiller in the past and he asked me many occasions who owes me money.

Q. I'm speaking specifically about January 11th, 1971, Mr. Robinson, do you recall that conversation?

A. Yes, I believe so.

Q. And on that conversation, did you tell him that Twin Fair owed you four thousand five hundred dollars?

A. No.

THE COURT: Your answer?

THE WITNESS: No.

BY MR. GARDNER:

Q. And further relating to that specific conversation, did you tell Mr. Spitzmiller that Loblaw's, that's a grocery chain, is that right?

A. That's right.

Q. That Loblaw's owed you six thousand six hundred dollars?

A. That's right.

Q. Did you give that information to Mr. Spitzmiller?

A. No.

Q. Your answer is no?

A. That's correct.

Q. Will you please speak up, Mr. Robinson? Did you also tell Mr. Spitzmiller on January 11th, 1971, that Pasco Meat owed you nine thousand five hundred dollars? Did you give that information?

A. No.

Q. Now, did you also tell Mr. Spitzmiller on January 11th, 1971, that Wardyabid owed you eleven thousand dollars?

A. No.

Q. Your answer is no?

A. No.

Q. Let the record show that he has answered the question no. Finally, Mr. Robinson, on January 11th, did you tell Mr. Spitzmiller that Tripi owed you three thousand six hundred dollars?

THE COURT: Your answer?

THE WITNESS: No.

BY MR. GARDNER:

Q. And who is Tripi? Is it F. C. Tripi and Sons?

A. Yes.

Q. Is that a wholesale grocery chain?

A. That's right.

Q. Do you also recall telling Mr. Spitzmiller on January 11th, 1971, that the only debt or obligation that you owed were owed to Manufacturers and Traders Trust Company? Did you tell him that?

A. I don't recall that I told him anything.

Q. You don't recall that you told him anything. Do you specifically recall that you did tell him that or that you did not tell --

A. I did not tell.

Q. You definitely did not tell him that?
A. I don't recall that I ever mentioned anything to him.
Q. In fact, you owed obligations to other people, did you not?
A. Yes.
Q. Is there any possiblity that you told Mr. Spitzmiller on that day that your only debt was the M&T Bank?
A. I don't think so. I don't think it was ever discussed to my recollection.
MR. SHELDON: What day are you referring to, Mr. Gardner?
BY MR. CARDNER:
Q. January 11th, 1971. The same conversations that we have been previously talking about. You understood that that's the conversation I'm referring to, did you not?
A. Yes, I do.
Q. Do you recall at the conclusion of that conversation that Mr. Spitzmiller asked you to meet with Mr. George Sheldon at the bank at a later time?
A. Yes, I believe he arranged a meeting.
Q. And do you recall that you ultimately met with Mr. Sheldon and Mr. Spitzmiller and a Mr. Ira Pressman

on January 13th, 1971, in the morning?

A. Yes, I believe so.

Q. And, where was that meeting? It was at the M&T Trust Company, was it not?

A. Yes, M&T, that's right.

Q. Now, do you recall in that meeting that Mr. Sheldon asked you again whether you had any other debts except debts that you owed to the Trust Company? And do you recall telling him that you did not have any other debts?

A. I don't believe I ever discussed it.

Q. You never discussed it?

A. I don't believe so. I don't recall anything.

Q. Do you recall that after you gave the answer that you had no other debts that Mr. Pressman, your attorney corrected you and reminded you about the mortgage on your home? Do you recall that?

A. Let's see. I was under extreme difficulties, pressure at that time, and I don't remember.

Q. I'm asking you, sir, whether you now recall that conversation?

A. I don't recall.

Q. Do you recall in the course of the discussion with Mr.

Sheldon that you indicated by either showing him a list or reading to him that you had these same accounts receivable that I have referred to just a few moments ago?

A. I don't believe so.

Q. You don't believe so. Are you sure?

THE COURT: Perhaps Mr. Gardner, if you question from the table back there, maybe then the witness will speak up.

BY MR. GARDNER:

Q. Are you sure, Mr. Robinson? Mr. Robinson, isn't it a fact that you well recall that at the meeting with Mr. Sheldon you told him about the same accounts receivable that you have told to Mr. Spitzmiller on January 11th?

A. I don't remember. I don't believe I ever mentioned accounts receivable to him. I don't believe so.

Q. Is there any possibility that you are wrong?

A. I don't think so.

Q. Would you recall at the present time if you had advised Mr. Sheldon at the meeting that you had accounts receivable of something in excess of forty thousand dollars, you would remember that, would you

not? Would you not, Mr. Robinson?
A. Remember what?
Q. That in January of this year you told Mr. Sheldon that you had a list?
A. I didn't tell Mr. Sheldon. I don't recall ever telling him anything.
Q. It's clear then that you definitely did not tell him?
A. Not to my recollection. I don't think so.
Q. If you would say I definitely did not tell him, I would stop and go on, but you always say to your recollection.
MR. SHELDON: He's answered the question, your Honor.
THE COURT: Well, I overrule the objection. You may ask the witness once more, Mr. Gardner.
BY MR. GARDNER:
Q. Mr. Robinson, would you have any difficulty recalling that you gave Mr. Sheldon a list of accounts receivable that exceeded --
A. I would remember if I gave -- I don't think I gave him any list.
Q. Either orally or in writing?
A. Right.
Q. And if you had given one you would remember it, would

you not?

A. I would, yes.

Q. Okay. So it's your testimony then at the meeting on January 13th you did not give Mr. Sheldon any such list?

A. No, I don't think so.

Q. And in the course of that conversation with Mr. Sheldon, do you recall that Mr. Sheldon inquired regarding your relationship to New York Commodities, Inc., do you recall that?

A. I believe so, yes.

Q. And in response to that, do you recall advising Mr. Sheldon that the accounts receivable which you had given him were owing to you personally and not to New York Commodities, Inc.? Do you recall giving that answer?

A. No, I don't believe so.

Q. And, of course if you had not given him any accounts receivable you would not have given him any such statement, would you?

A. That's correct.

MR. GARDNER: May I have just a moment, your Honor?

THE COURT: Yes.

BY MR. GARDNER:

Q. Mr. Robinson, have you had any automobile in the past three years except that 1969 Pontiac?

A. If I had any what?

Q. Automobile except the 1969 Pontiac?

A. That's what I had is the '69 Pontiac.

Q. There's -- you have had no automobile, other automobile in the family that you drove?

A. I had -- the only car that I drove was the '69.

Q. And was there any other car in the family during that period?

A. Yes, there was another car.

Q. And what was that?

A. A Gremlin.

Q. A Gremlin?

A. Right.

Q. Was that ever owned in your name?

A. Yes, it was owned in my name.

Q. And did there come a time when it became owned in someone else's name?

A. That's right.

Q. And when was that?

A. That was in, I believe, the beginning of the year.

Q. Of this year?
A. Right.
Q. And to whom was it transferred?
A. To my wife.
Q. And will you tell us how that took place?
A. I don't quite follow your question. What took place?
A. Why did you transfer the car to your wife?
A. Because she had been paying all along for the car and she's using the car for her business.
Q. For her business?
A. That's right.
Q. What business is she --
A. She's a moving consultant.
Q. And it was your car though, prior to the time of the transfer?
A. Beg your pardon?
Q. It was your car prior to the transfer?
A. It was in my name, but she has been paying all along since the beginning.
Q. Paying all along, I see.
A. She didn't have a license at that time so I had to take the car in my name.
Q. Isn't it a fact that you made the transfer specifically

knowing you might file bankruptcy and you wanted to get the car in your wife's name before then?

A. No, no.

Q. No?

A. That wasn't my intention at all.

Q. Was there any money owing you from New York Commodities Inc.?

A. New York Commodities owing me money?

Q. Yes.

A. No.

Q. Do you owe them anything?

A. No.

MR. GARDNER: May I approach the witness with these schedules?

THE COURT: Yes, surely. He seems to be speaking up a little bit.

BY MR. CARDNER:

Q. Referring to your petition which you filed in the Court, Mr. Robinson --

A. Yes.

Q. -- under Item 11, you refer to the transfer to your wife on February 25th, 1971, is that correct?

A. Yes, that's right.

Q. And you filed bankruptcy a week later, I believe, or on, around March 3rd?
A. Right.
Q. And by February 25th, you had already made the decision to file bankruptcy, had you not?
A. Not -- the decision was made in March.
Q. I'm asking you, sir --
A. March the 3rd it was filed, the petition.
Q. But you had conferred with your attorney and made a decision to file bankruptcy at some time prior to the day of the papers, had you not?
A. That is correct.
Q. And now you state in the paper that the consideration was her assumption --
A. That's right.
Q. -- of the debt which you owed on the financing of the car, is that right? Along with the fact that she made the prior payment?
A. That is correct.
Q. How much is that car worth to the best of your knowledge?
A. About two thousand, two thousand one hundred.
Q. How much money remains owing to Marine Trust Company,

if you know?

A. About the same amount, I would say.

Q. Now again looking at your schedules, you have two mortgages against your real property, is that correct? Marine Trust Company and East Buffalo Credit Union, is that right?

A. Right.

Q. And your schedule shows approximately twenty-nine thousand dollars owing between them?

A. Right.

Q. And on Schedule B1, with respect to the value of your property, or correction, excuse me. You also have taxes owing on the property?

A. That's correct.

Q. For about fifteen hundred dollars, is that right?

A. That's right.

Q. So that would make a total of approximately thirty thousand dollars more or less, is that correct?

A That's right.

THE COURT: Your answer? I didn't hear the witness's answer.

THE WITNESS: Right.

BY MR. GARDNER:

Q. And on Schedule B1, you refer to the house as being subject to the tax and the mortgages. And you refer to the value of the house as being five hundred dollars?

MR. SHELDON: I'm going to object because Mr. Gardner is reading from the schedule. Let him read what it says at the top of the column which says five hundred dollars and not put a question which is improper to the witness who couldn't understand then the exact relationship between the debt for interest and the -- and the value of the house.

MR. GARDNER: I haven't finished posing my question.

THE COURT: Let me hear the question, Mr. Gardner?

BY MR. GARDNER:

Q. Now I assume that five hundred dollars represents your value of your interest in the house, is that correct?

A. That's correct.

Q. And do you have any opinion as of the present time as to what your house is worth for both you and your wife's interest, the total maximum value?

A. I don't know.

Q. But you had --
THE COURT: Your answer?
THE WITNESS: I don't know.
BY MR. GARDNER:
Q. You had an opinion last year that it was worth fifty-three thousand five hundred dollars, didn't you?
A. The opinion was by some people that I asked. It wasn't any real estimate. Somebody that -- from the neighborhood, they told it that they think it would be worth--
Q. Well, did you -- that was your opinion at that time, I assume?
A. That's the opinion of the people that they told me. So, I assume I took that opinion.
Q. Do you have any reason to believe that it's worth less than that at the present time?
A. Less than what?
Q. Fifty-three thousand five hundred?
A. I believe so.
Q. You think it is worth less than that?
A. Much less.
Q. Well, how much do you think it is worth, based on whatever sources or opinions or information you have had available to you?

A. I don't know. I will try to find out. I didn't look into it.
Q. Is it worth forty-five thousand?
A. I don't believe so.
Q. You don't believe it's worth forty-five thousand?
A. I don't think so.
Q. Is it worth forty thousand?
A. I don't think so.
Q. Is it worth thirty-five thousand?
A. I don't know. You're asking me -- I'm not in real estate business. I don't know.
Q. I'm trying to --
A. You're trying to ask me a question that I don't understand, which is not my field.
Q. Mr. Robinson, I'm trying to find out how you came at the figure five hundred dollars on your schedules. That's all I'm asking. Do you know how you arrived at that figure? Do you know how you arrived at that figure, yes or no, Mr. Robinson?
A. I don't know.
Q. You don't know, okay. Mr. Robinson, you have no assets of any kind at the present time except your house and the '59 Pontiac that the M&T has taken back.

Is there anything else?

A. That's it. '69 Pontiac.

Q. Yes, excuse me. And also household goods and furniture. Do you have any specific hobby equipment, camera equipment, ham radio equipment, anything of that sort in your house other than normal household furnishings?

A. That's right. That is correct.

Q. Only routine household furnishings, not extraordinary?

A. Not extraordinary.

Q. May I have just one moment, your Honor. I think I'm almost done. Mr. Robinson, are you employed or engaged in business at the present time?

A. Yes, I am.

Q. And what is that business, sir?

A. Same business I was before, salesman.

Q. And you're still performing services for the same company?

A. New York Commodities, that is correct.

Q. And are you receiving commissions from New York Commodity for your services?

A. Yes, I am.

Q. And have you been receiving commissions from that, routinely along the way month by month?

A. Every month, yes.
Q. Approximately how much are the annual -- correction, the monthly commission which you receive at the present time?
A. The last few months was about eight hundred to twelve hundred dollars per month.
Q. Okay. When during the month are these commissions paid to you?
A. The middle of the month.
Q. And if they are paid in the middle of the month, are they for the work --
A. Previous month.
Q. The previous month?
A. That's correct.
Q. And did you receive commissions on around March 15th of this year from New York Commodities?
A. Yes.
Q. And they would have been for the month of February, is that correct?
A. That's correct, yes.
Q. And what did those commissions amount to?
A. Eight hundred dollars, I believe.
Q. About eight hundred dollars?

A. Yes, last commissions.
Q. Do you have some type of records that would confirm what that commission paid was at that time?
A. Yes.
Q. And what did you do with that money? I'm referring to the money you received in the middle of March?
A. It was -- I was paying for my mortgage, for utilities, for living expenses.
Q. I see. You used the money yourself in connection with living expenses, is that correct?
A. That is correct.
Q. Now, you were borrowing money from time to time from the M&T Trust Company for a period of years, were you not?
A. That is correct.
Q. I believe you refer to something like five years, approximately?
A. Yes.
Q. And is it fair to say that during the period of the last three years, you would go in from time to time and ask for some additional money and you would borrow money and make payment, and borrow additional money, is that correct?

A. That is correct.

Q. And do you recall in the conversations you had when you were attempting to borrow additional money that the lending officer would refer to financial statements, which he had of yours on file, from time to time, and he would discuss with you the question of lending money to you?

A. Yes.

Q. Do you remember that? Your answer is yes?

A. Yes.

Q. And you specifically remember that he did look at financial statements on file with the bank at times when you were asking to borrow additional monies?

A. No, no. I believe on many occasions.

Q. On many occasions?

A. On many occasions I borrowed money, but it was never requested immediately, the financial statement.

Q. I appreciate that.

A. He requested in getting the money, but the financial statement was after I received the money.

Q. Mr. Robinson, my question is this. You were filing financial statements, that you recall?

A. That's right.

Q. And what I'm asking you is was it not true that on many occasions when you sought to borrow money --

A. Yes.

Q. -- the lending officer would refer to the financial statement --

A. Not immediately.

Q. -- that you had previously filed? He wouldn't ask for a --

A. For the past, yes. Past year.

Q. He would look at the earlier one?

A. Right.

Q. Now, you gave a mortgage on your home to East Buffalo Credit Union in March, 1969, do you recall that?

A. That time I don't remember now. That was a mortgage. I don't recall.

Q. I'm looking at Schedule A2 of your schedules, Mr. Robinson. I draw your attention to the -- reference to the credit union and collateral mortgage. Do you see that?

A. Yes, I do.

Q. Does that refresh your recollection about that mortgage?

A. I think so, yes.

Q. You recall that now, do you?

A. I don't recall. At the time that was a mortgage, but I -- when I got the loan --

Q. You did borrow money from the East Buffalo Credit Union?

A. Yes, I did.

Q. At that time, did they ask you to give them a mortgage in connection with the loan?

A. I remember I signed a paper but whether it was a mortgage or not --

Q. When you were making out this financial statement for the M&T, did you refer to the records that you had available or to your accountant to get information for them?

A. I did it by myself.

Q. You did it by yourself?

A. Yes.

MR. GARDNER: I believe I have no further questions, your Honor.

THE COURT: Mr. Sheldon?

RE-DIRECT EXAMINATION BY MR. SHELDON:

Q. Mr. Robinson, getting to the value of your house, did

you understand Mr. Gardner's questions with respect to the value of your house, the cost of the house?

A. I don't think so. Not all the questions.

Q. Did you have your house built or did you buy it from someone else?

A. I bought it.

Q. Did you have it built yourself?

A. No.

Q. Didn't you purchase the land first, Mr. Robinson?

A. Yes, that's right.

Q. Didn't you build a house yourself on that piece of land?

A. Yes.

Q. I mean not you, yourself, but a --

A. A builder, yes, yes.

Q. And how much did the land cost, Mr. Robinson?

A. Sixty-five hundred.

Q. And how much did the building cost to build it?

A. Thirty-two five.

Q. So the land cost was sixty-five hundred and the building cost was thirty-two five, is that correct?

A. That's right.

Q. You have a swimming pool at that house?

A. No.
Q. Don't you have a swimming pool above ground?
A. One above, yes.
Q. How much did that cost?
A. About seven, eight hundred.
Q. Did you finish the basement recently? I mean -- or sometime after you built it?
A. Partly it was finished.
Q. Would you say, Mr. Robinson, that you spent close to forty-five thousand dollars building that house?
MR. GARDNER: Objection.
MR. SHELDON: What's the objection?
THE COURT: Overruled.
MR. GARDNER: Leading.
BY MR. SHELDON:
Q. You heard the question. Did you spend close to forty-five thousand dollars to build that house with the land and the improvements?
A. I would say yes.
Q. Now, Mr. Gardner started his questions this afternoon with the subject of a loan, a note, excuse me, strike the loan. A note to the Manufacturers and Traders Trust Company in December of 1969, is that correct?

A. That's right.

Q. And he showed you Exhibit 1 and asked you if that was a note that you signed on December 12th of 1969. Did he show you Exhibit 1?

A. I believe so.

Q. And what was the amount of the note?

A. Thirty-five thousand.

Q. Did you get thirty-five thousand dollars on December 12th of '69?

A. No, I did not.

Q. Did you get any money on December 12th of '69?

A. I don't believe so.

Q. When did you get the money from the bank?

A. Prior to December the 12th.

Q. You got no money on December 12th of '69, is that correct?

A. That's right.

Q. And Mr. Spitzmiller just threw a lot of papers and you signed them, isn't that correct?

A. That's right.

Q. He tried pulling something on you, isn't that correct?

A. That is correct.

Q. He gave you no money on December 12th of '69, did he?

A. No, he did not.
Q. Mr. Robinson, I show you Exhibit 2, I think it is 2, no, Exhibit 3, which was presented second and show you a loan agreement dated December 12th of '69, is that correct?
A. That is correct.
Q. And what does it say as to the proceeds of the loan? What are they to be used for? Do you remember?
A. The proceeds of the loan to be used solely for the purchase of inventory and taking care of accounts receivable and all the normal costs of the borrowers present business.
Q. But you did not receive any money on December 12th, '69, is that correct?
A. Correct.
Q. And Mr. Spitzmiller just gave you this, to you, and you signed it, is that correct?
A. That is correct.
Q. And you believed him because he was supposedly a trustworthy guy, is that correct?
A. That is correct.
Q. He's an officer of the M&T Bank?
A. Right.

Q. And to repeat so there's no question, you got no money on December 12th?
A. I did not.
Q. Now, did you have an accountant all year around, or just to file your income tax returns?
A. All year around.
Q. Did he do anything for you during the year?
A. I don't follow your question, Sheldon.
Q. Did he do any work for you during the year except the income tax return?
A. That's all.
Q. He never did anything. He didn't prepare any invoices or --
A. No, no.
Q. When you collected money from accounts receivable in the summer of 1970, did you pay for the merchandise that you purchased with the collections that you had made?
A. Yes.
Q. You didn't answer a question which Mr. Gardner passed over. How did you get that form you filled out for the M&T which is called a -- so-called financial statement? Where did you?
A. How did I get it?

Q. Yes.

A. Mr. Spitzmiller gave it to me.

Q. Did he mail it to you or give it to you in person?

A. Gave it to me.

Q. Is that ordinary?

A. No. Sometimes he put it in the mail.

Q. As a matter of fact, sometimes a bank officer came to your house to have them filled out, isn't that correct?

A. Yes, that is correct.

Q. Was the bank officer's name Mr. Tom Licata? Was he at the Delaware office prior to Mr. Spitzmiller?

A. Prior to Mr. Spitzmiller, that is correct.

Q. And he told you to fill out the financial statement, didn't he?

A. That's right.

Q. He never asked your accountant to fill out the financial statement?

A. No.

Q. You never discussed it with anyone, did you?

A. No.

Q. Did you have any schooling in the United States of America?

A. No.

Q. As a matter of fact, any education that you have was not received in the United States?

A. No. It was all received overseas.

Q. And how far did you get into education?

A. About eighth, ninth grade.

Q. And when did you stop going to school?

A. Prior to the Second World War.

Q. What happened to you at that time?

A. Well then was the second world war. I was in a concentration camp.

Q. And you never received any education from the time you went into the concentration camp until now, is that correct?

A. That is correct.

Q. You don't even understand numbers that well, do you?

A. Beg your pardon?

Q. You don't understand numbers that well, do you?

A. Not too well.

Q. Didn't I tell you, Mr. Robinson, what the value was of your interest in the house?

A. Yes, you did.

Q. Didn't I tell you the survivorship interest has nothing

to do with the equity of the house?

A. Yes.

Q. And wasn't it me that selected the five hundred dollar figure?

A. That is correct.

Q. That's your survivorship interest, is that correct?

A. Yes.

Q. Do you know what survivorship means?

A. The one that's left, right?

MR. SHELDON: The one that's left, right. I have no further questions.

RE-CROSS EXAMINATION BY MR. GARDNER:

Q. How long have you been in business in the meat sales business, Mr. Robinson?

A. Since 1952. Eighteen years.

Q. 1952, right. And prior to doing your financing with M&T, had you been borrowing money from another bank or trust company, at any time?

A. Yes.

Q. And who would that be?

A. The Liberty.

Q. Liberty?
A. Yes.
Q. And you had been getting financial statements to Liberty Bank, had you not, over the years?
A. Yes.
Q. And you knew what financial statements were and you knew what they were supposed to do, did you not, in the course of your business?
A. I suppose so, yes.
Q. And you knew the financial statements were supposed to tell the bank what your financial condition was, what your true financial condition was, isn't that so?
A. I suppose so.
Q. And you certainly had learned the course of your business experience that -- that the information on the financial statement was supposed to be true and correct, had you not? You knew that certainly?
A. Not quite. I mean, most of the time I didn't understand the questions. They were asking different things.
Q. But you did know that the information was supposed to be accurate, to the best of your ability, didn't you know that?

A. I suppose so.
Q. And you had been working with your accountant for many years in preparing --
A. Not for many years, just about four, five years.
Q. You only used him, your accountant for four, five years?
A. There was another one prior to him. He passed away.
Q. And there was a different accountant prior to that, right?
A. Right.
Q. And you had had occasion to gather financial information together?
A. The only -- we only on the Federal Income Tax.
Q. My question to you, Mr. Robinson, you had to help prepare the information for your accountant so he could fill out your income tax, didn't you?
A. Right.
Q. And you were certainly sufficiently familiar with figures that you could run your business, weren't you?
A. Not quite.
Q. You managed to run your business for about eighteen years, did you not?

A. That's right.
Q. And you filed your income tax return during that period, is that right?
A. Yes.
Q. Would you say that you had more understanding of figures and financial information as it related to your business than the average man who was not involved in business, isn't that a fair statement?
A. Well, it all depends how --
Q. Mr. Robinson, you did not have a lot of formal school, did you?
A. That's right.
Q. But you considered yourself a successful businessman for many years in this city, didn't you?
A. Yes. Going back the past years, I would think so.
Q. And certainly for purposes of your business needs, you had an adequate ability to use your own judgment and report figures, isn't that correct?
A. Yes, I suppose so.
Q. Okay. Now, with respect to the house, I believe I asked you if you had made any improvements of the house and I believe you indicated that you had not. But, I gather you did partly finish the basement, is

that right?

A. That's right.

Q. And what did that involve? Was that a concrete floor in the basement?

A. No, the walls and the ceiling.

Q. By putting in partitions, would you say and --

A. Well, walls and ceiling and --

Q. Did you do the work yourself or did you have someone do it for you?

A. I had someone do it.

Q. And how much did that cost?

A. Actually, it was someone we helped in our -- we had some help together with it and I would say fifteen hundred dollars, maybe something like that.

Q. Fifteen hundred dollars. You had an above ground swimming pool that you said costs something in excess of seven hundred, is that right?

A. Seven, yes, I believe so.

Q. And what other improvements were made in the house besides the swimming pool and the basement?

A. There was minor things I believe, in the house.

Q. Excuse me?

A. Minor things in the house. Minor, say painting.

Q. Just painting and redecorating?
A. Right.
Q. This was a new house, build brand new in 1964, wasn't it?
A. That's right.
Q. So anything apart from the business and the swimming pool would have been relatively minor?
A. When it was built it was not completed. It was certain things that weren't there.
Q. Well, what were the things that weren't there, that's what I want to know.
A. The basement was one of the --
Q. Yes. And the swimming pool, and what else?
A. Some doors I put in, extra doors.
Q. And how much did they cost?
A. Three hundred dollars, maybe around that neighborhood.
Q. Anything else besides the doors?
A. The fence, that's right. The fence that was put in around the house.
Q. And how much did that cost?
A. I think it was about five hundred dollars, you know.
Q. Anything else?
A. That's about it.

Q. That's it. Now, referring to the transaction of December 12th, 1969, you indicate that you did not receive any money on that day for the thirty-five thousand dollars, is that not correct?

A. That is correct.

Q. You did receive something, though, didn't you? Did you not receive a cancelled earlier note for thirty-five thousand dollars?

A. I don't believe so.

Q. You don't believe so. Would your counsel be able to?

MR. SHELDON: I'll stipulate.

MR. GARDNER: Does counsel have a copy of that note presently?

MR. SHELDON: No.

MR. GARDNER: Would counsel stipulate that this earlier thirty-five thousand dollar note was dated three days prior to December 12th, 1969?

MR. SHELDON: I don't recall. Sometime prior to, a few days before.

MR. GARDNER: A few days before. Isn't it a fact, Mr. Robinson, that whatever money had been delivered to you less than a week before December 12th of '69, that the formal papers

were drawn up by Mr. Spitzmiller or someone at the bank?

MR. SHELDON: I'm going to object unless he clarifys as to what money and how much.

MR. CARDNER: I'm not specifying and pinning down the amount. I'm just saying whatever money, what took place occurred within a week prior to.

THE COURT: Overruled. You may answer.

BY MR. CARDNER:

Q. Do you recall that?

A. Prior to December 12th?

Q. Do you recall that within a week before December 12th you had signed another note and had given it to Mr. Spitzmiller for thirty-five thousand dollars, do you recall that?

A. I don't recall that.

Q. Do you recall on --

THE COURT: Your answer?

THE WITNESS: I don't recall.

BY MR. CARDNER:

Q. And do you recall that on December 12th, 1969, when you signed a new note, the old note was cancelled and

returned, do you recall that?

A. I believe so.

Q. You do recall that?

A. I believe so.

Q. There's no question in your mind, Mr. Robinson, that you in fact did owe thirty-five thousand dollars to the bank on December 12th, 1969, is there? You owed that money?

A. I didn't get the money on December 12th.

Q. You never received the money that day and I don't believe I ever said you did. But, you did owe that amount of money to the bank, didn't you, isn't that right? On December 12th, 1969, you owed thirty-five thousand dollars to the M&T Bank and the note which you signed on that date represented that debt, isn't that correct?

A. That is correct.

Q. Now, you have indicated with regard to the financial statements, you received them from Mr. Spitzmiller and you received them on earlier occasions from Mr. Licata?

A. Yes.

Q. Is that right?

A. That is correct.

Q. You got the -- received the blank form which was subsequently filled out by you, is that right?

A. Yes.

Q. And on some occasions the form arrived in the mail and on some other occasions you received the form personally, is that right?

A. That is correct.

Q. I think you indicated, Mr. Licata came to your house once and delivered it?

A. Yes.

Q. When was that?

A. I would say about '66, '67.

Q. And this was an occasion, I gather, when he was stopping by and he delivered it to you, when you say--

A. No. He just came there for -- for that particular purpose. They came to say hello with his family and spend some time with him there.

Q. And you discussed your business affairs with the bank?

A. He knew it a long time because he's the one who started me on this in '65.

Q. Now, I think you indicated that Mr. Licata on occasion

told you how to fill out the--

A. That's right.

Q. What did he say to you, please? First of all, could you tell us when this conversation occurred?

A. I believe that it was in '67. 1967 or '66.

Q. And what did he say to you?

A. He said it's going to help me and show me how to fill out the financial statement.

Q. And did you -- well, he showed you how to fill it out?

A. He did it by himself. As a matter of fact, on some of the statements --

Q. In other words, he filled out the statement?

A. Right.

Q. Or showed you by writing something in and showing you how it should be filled out?

A. I believe I have a copy of that too.

Q. And did you actually sign that statement or did he just give that to you as a sample, do you remember?

A. Well, he said this is the way it should be filled out, which he showed me that's the way it should be filled out and he wrote it himself, in.

Q. And what happened to that particular document? Did you sign that document or did he leave it with you?

A. I think it's with me, the document.
Q. He left it with you?
A. Yes.
Q. Right.
A. I'm almost sure. I would have to check that out.
Q. All right. And do you recall whether after he left this document with you you then subsequently filled out a financial statement which you filed with the bank during that same period?
A. I believe so.
Q. So, in other words, Mr. Licata demonstrated for you with a sample how the form should be filled out?
A. Not demonstrate. He showed me how to fill out and where to put the figures in and prepared the financial statement for me.
Q. Okay, fine. Now, referring, if you will, to Exhibit 6, which is the statement or copy of the statement filed in 1968, and if you can tell me, will you advise me what portion of the statement he gave you instructions about that you can recall?
A. This was --
Q. This was a later statement?
A. I see.

Q. I'm showing it just so you have the form before you, Mr. Robinson.
A. I don't recall.
Q. The answer is you don't recall?
A. That's right. I don't recall offhand.
Q. You have no recollection at all as to what instructions he gave you?
A. Not offhand, no.
Q. Well --
THE COURT: I didn't hear your answer?
THE WITNESS: Not offhand.
BY MR. GARDNER:
Q. Is there any place where you made any records or notes as to what --
A. I believe I have a copy of that.
Q. You have a copy of the statement which he prepared?
A. Right, I believe so.
Q. The sample that he prepared?
A. I wouldn't say a sample. It's a financial statement.
Q. Okay. And where is that document right now?
A. I believe it's in my house.
Q. In your house. Is it made out in ink or in pencil?
A. I believe it's made out in ink.

Q. All right. Do you have any recollection of what Mr. Licata told you at the time, apart from the document itself, do you have any personal recollection of any of your conversation with him?

A. Not that I know.

Q. So the only thing --

THE COURT: Your answer.

THE WITNESS: Not that I remember offhand.

BY MR. GARDNER:

Q. So the answer is the only thing you have is the physical document itself, is that right?

A. That's right.

Q. Now, did you ever receive any instructions from Mr. Spitzmiller as to how to fill out any financial statements?

A. No. Not from him.

Q. And did you ever receive any instructions from Mr. Licata on any other occasion than the one you referred to as to how to fill out the financial statement?

A. Yes.

Q. And when was that?

A. That was a year before.

Q. A year earlier?
A. I believe '66, '65.
Q. And did you receive any kind of a document or anything that Mr. Licata filled out at that time?
A. No. He took out a financial statement and he put it in himself, the figures, and show me how it should be done and so forth and so on.
Q. Do you have that statement available?
A. I believe I do.
Q. And that would be the previous year, is that right?
A. I believe so.
Q. And do you have personal recollection of the conversation between you and Mr. Licata at that time?
A. No, I don't remember.
Q. Are there any other occasions when Mr. Licata or any other officer of the M&T Bank, when you received any instructions as to how to fill out the financial statement?
A. That's about all.
Q. Those are the only two?
A. I think so.
Q. And you have no recollection as to what the instructions were, but you do have documents that you could produce?

A. I believe so.
Q. Is that correct?
A. That is correct.
Q. By the way, Mr. Robinson, in what country did you receive your formal education?
A. In Poland.
MR. GARDNER: I have nothing further, your Honor.
THE COURT: Mr. Sheldon?

RE-DIRECT EXAMINATION BY MR. SHELDON:

Q. I show you the loan agreement which is part of Exhibit 3 and ask you to read the sentence which starts with the Roman Numeral I?
A. Trust Company agrees to lend to the borrower the amount not to exceed the sum of thirty-five thousand dollars, to any -- any one time outstanding.
Q. And then I ask you to read the first five words of Roman Numeral II B.
A. Over here?
Q. Yes.
A. The proceeds of this loan.
Q. You heard Mr. Gardner stipulate that the bank didn't

give you any money on December 12th, '69, isn't that correct?

A. That is right.

MR. GARDNER: For the record, I don't contest the accuracy of the facts. I don't know whether I stipulated it or not.

MR. SHELDON: I stipulated it.

MR. GARDNER: That's what you have advised. I don't contest the fact, counsellor. I don't think I'm in position to give evidence.

BY MR. SHELDON:

Q. The proceeds of this loan, is that correct?

A. Yes.

Q. And proceeds of that loan according to that, purchase inventory, right?

A. Right.

Q. But you got no money?

A. That's correct.

Q. Basically, Mr. Robinson, you're really not in business, are you basically, Mr. Robinson?

A. I'm not.

Q. You're really a commissioned salesman?

A. That's right.

Q. If you were working in a store, you would be the same type of person, isn't that correct?
A. Correct.
Q. In other words, you don't have any draw, is that correct?
A. That's right.
Q. And you only earn a commission when you sell something?
A. That's right.
Q. And this so-called business was to buy merchandise from those customers who couldn't use it after once they bought it to accommodate them?
A. That's right.
Q. And that basically was the so-called business?
A. Right.
Q. And actually, you're a commissioned salesman, isn't that correct?
A. That is correct.
Q. But basically you're a commissioned salesman. You have no employees or anyone like that, is that correct?
A. No.
Q. No office other than your home?
A. Right.

MR. SHELDON: I have no further questions.
MR. GARDNER: Just one question, your Honor. Mr. Robinson, you do know the difference between what is true and what is not true though, don't you?
MR. SHELDON: I'm going to object to this, your Honor.
THE COURT: Sustained.
MR. CALLAHAN: Your Honor, I only have a few questions if I may.
THE COURT: Off the record.
(Discussion off the record.)

CROSS EXAMINATION BY MR. CALLAHAN:

Q. I'll try not to repeat anything, Mr. Robinson. But, on or about December the 8th, 1970, you did receive a loan from the Beneficial Finance Company, did you not, sir?
A. That's correct.
THE COURT: Your answer?
THE WITNESS: Correct.
MR. CALLAHAN: Would you mark that?
(Whereupon a document was then received and

marked as Exhibit 7 for identification.)

BY MR. CALLAHAN:

Q. I show you here Exhibit #7 for identification. I ask you, sir, if you can identify your signature there? Is that your signature?

A. Yes, it is.

Q. All right. And that's a note that you signed for Beneficial Finance Company on December 8th, 1970, sir?

A. Yes, I did.

Q. Thank you, sir. Now, at that same time, Mr. Robinson, you were requested to complete a financial statement by the people of Beneficial, is that correct, sir?

A. Is that the financial statement?

Q. Yes.

A. Yes.

MR. CALLAHAN: Mark this, please.

(Whereupon a document was then received and marked as Exhibit 8 for identification.)

BY MR. CALLAHAN:

Q. I show you here Exhibit #8, Mr. Robinson and I ask you if you can identify your signature there?

A. Yes.

Q. Is that your signature, sir?
A. Right.
Q. And this is the application and financial statement you completed for Beneficial at that time, is that correct?
A. Yes.
Q. And the writing on this, is that your handwriting, sir?
A. Yes, it is.
Q. All right. And when you completed this, you were requested to list all of your obligations, is that correct, sir?
A. That's right.
Q. All right. To expedite matters, you have listed Marine Midland, is that correct?
A. That's right.
THE COURT: Your answer?
THE WITNESS: Correct.
BY MR. CALLAHAN:
Q. You listed Marine Midland and owing them three separate accounts, is that correct?
A. Right.
Q. And you have in your own handwriting, "I owe no other--" or what do you say there? What's --

A. I owe no bills.
Q. I owe no bills, right?
A. Yes.
Q. And you indicated that, did you not, sir, that your total indebtedness was in the amount of twenty-eight thousand two hundred dollars, is that correct?
A. That's right.
THE COURT: Your answer?
THE WITNESS: That is correct.
BY MR. CALLAHAN:
Q. And, sir, you indicated at that time that your income was in the amount of fifteen hundred dollars per month, is that right, sir?
A. That's right.
Q. Now, at the time that you made this loan with Beneficial you also pledged with them some security for the loan, is that right, sir?
A. That I don't recall.
Q. All right.
A. Because I was at that time in such distress, you know, Mr. French said that here's a paper, formalities, that you have to fill it and just sign.
Q. You did sign a security agreement, is that correct, sir?

A. I believe that's what it is.

MR. CALLAHAN: Would you mark this?

(Whereupon a document was then received and marked Exhibit 9 for identification.)

BY MR. CALLAHAN:

Q. Now, sir, I show you Exhibit #9 and I ask you if you can identify the signature there?

A. Yes, I do.

Q. That's your signature?

A. Yes.

Q. And that's the security agreement that you signed, is that correct, on that date?

A. Yes.

Q. All right. And that shows as security, a 1969 Pontiac, is that right?

A. That, I don't know.

Q. Do you recall having a conversation with Mr. French at the time that you obtained this loan, that you owned two automobiles? One financed with Marine and one 1969 Pontiac that was free and clear?

A. I don't believe so. I don't recall that I ever discussed it with him.

Q. You did indicate to him that you did own two automobiles?

A. No, I don't believe so.
Q. All right.
A. I never -- I don't remember him asking anything about automobiles at all.
Q. Now, sir, at the time that you obtained a loan from Beneficial, you were, in fact, indebted to the Manufacturers and Traders Trust Company, were you not, sir?
A. That is correct.
Q. And your schedules would indicate that you had two obligations with the Manufacturers and Traders Trust Company at that time. Would that be accurate, sir?
A. Yes.
Q. All right. Actually there's more. You were indebted to them in one obligation for thirty-five thousand dollars, is that correct?
A. That's correct.
Q. And then there was -- you were also indebtedted to them for that 1969 Pontiac station wagon, is that right, sir?
A. That I wasn't sure about.
Q. All right. And, sir, you also indicated during Mr. Gardner's examination that you also did business with some other financial institutes other than Marine. And

that would be Liberty National Bank, is that right?

A. That's right.

Q. And so there are dates omitted from this petition. May I assume, sir, at the time that you obtained the loan from Beneficial Finance Company, you were also indebted to Liberty National Bank?

A. That is correct.

Q. And there was some testimony as to some transactions with regard to Wardynskis, and you have Wardynski listed in your petition, in excess of twelve thousand dollars, sir. May I assume, sir, you were also indebted to Wardynskis in excess of twelve thousand dollars at the time you obtained the loan from Beneficial Finance Company?

A. That is correct.

Q. And you also indicated, sir, that on your petition in bankruptcy for creditors holding securities, Schedule A2, that you were indebted to the First Warsawer Club for an obligation incurred in October of 1970, with the balance of four thousand six hundred and twenty dollars?

A. That is correct.

Q. Can I assume, can I not, sir, at the time you obtained

the loan of fourteen hundred dollars from Beneficial in December of '70, you were also indebted to the First Warsawer Club in excess of four thousand dollars?

A. That's right.

Q. And in December of 1970, you did receive the fourteen hundred dollars from Beneficial, is that correct?

A. That is correct.

Q. And at the time that you did obtain the loan, did you not advise them that you owned a 1970 Gremlin?

A. Gremlin, yes.

Q. And didn't you indicate to them that you financed it through Marine Midland and you gave them the account number?

A. I believe so.

Q. All right. And you also indicated to them that you owned this 1969 Pontiac, is that correct?

A. An --

THE COURT: Your answer?

THE WITNESS: Yes.

BY MR. CALLAHAN:

Q. And you gave them the description, the serial number and everything else on there, is that correct?

A. I believe so.

Q. And you didn't indicate at any time that you owed anybody for that car, is that correct, sir?
A. That is correct.
Q. Now, sir, you had been dealing with the Marine, the M&T, the Liberty and many of those other financial institutions prior to the -- for some time prior to 1970?
A. You mean in December, 1970? I don't follow.
Q. You had had many meetings or transactions and meetings with people at the Manufacturers and Traders Trust Company?
A. Yes.
Q. And with the people at Liberty?
A. Yes.
Q. And in December of 1970, you were aware of that, were you not, sir?
A. Yes, I was.
Q. And when you made out these applications of financial statements with Beneficial, you knew that you owed those other people, did you not, sir?
A. Yes, I did.
Q. But you did in the statement to Beneficial, state that I hearby state and affirm, represent, or warrant to you

that my total indebtedness and obligations on this day do not exceed twenty-eight thousand two hundred dollars, isn't that correct?

A. That is correct.

Q. And you filled in that figure, isn't that correct, sir.

A. Yes.

Q. And you wrote this in your own handwriting, I have no bills?

A. That's right.

MR. CALLAHAN: Thank you, sir.

RE-CROSS EXAMINATION BY MR. SHELDON:

Q. Did you dream up those, "I have no bills," by yourself, or did someone tell you what the words were?

A. The manager mentioned to me --

Q. He told you to put that down, didn't he?

A. If I didn't have any, yes.

Q. What did you tell him your occupation was when you applied for the loan, do you recall?

A. Salesman.

Q. And did you give him a card as to whom you worked for?

A. Yes.
Q. What does the card say, as far as that card --
A. Sales representative.
Q. Had you done business with Beneficial before?
A. No.
Q. Never went to that office before to get a loan?
A. Never.
THE COURT: I didn't hear the answer.
THE WITNESS: No.
THE COURT: Never done business there before, all right.
MR. GARDNER: May I ask briefly with this last item now?
THE COURT: You may ask.

RE-DIRECT EXAMINATION BY MR. CARDNER:

Q. What was the -- what did you use the proceeds of the loan from Beneficial for, Mr. Robinson, the fourteen hundred dollars?
A. Had to pay some bills.
Q. What bills were they, please?
A. Some obligations I paid to the M&T for the interest, right, that I owed. And some to Marine.

Q. And did you pay some bills for anything in connection with your business?

A. No.

Q. Except the interest to the bank?

A. Interest to the bank and some that I owed to Marine Midland.

Q. And the money which you had borrowed from Marine Midland, had that been used in connection with your business?

A. No.

Q. What had that money been used for?

A. For personal --

Q. Personal --

A. Living, and bills that I had.

Q. Over the years, you borrowed a lot of money from M&T Trust Company, is it correct that some of that money was used for business purposes?

A. Some of them was used, yes.

Q. You don't know how much offhand, how much of it would have been?

A. No.

MR. GARDNER: Nothing further.

THE COURT: Any further questions. That's all, Mr.

Robinson. You may step down.

* * * *

Corrections - 4, 5, 6, 15

Assembly Exhibit 9

Re Wantyski P. 19
invoices — 20
tax returns 22
-29

Income
$9 000 —
Under 32-35

38- Item figure correct, same not
Also 40

Item value of 9 not re

55 et seq
57

Re A/R's

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

* *

In the Matter of

JACK ROBINSON in Bankruptcy

Bankrupt No.
BK-71-376

* *

Proceedings held before REFEREE BERYL E. McGUIRE at 308 United States Courthouse, Buffalo, New York on December 2, 1971.

APPEARANCES:

Messrs. CHIRLIN & SHELDON,
1566 Statler Hilton Hotel,
Buffalo, New York,
Attorneys for the Bankrupt;
DONALD P. SHELDON, Esq. of counsel.

Messrs. HODGSON, RUSS, ANDREWS,
WOODS & GOODYEAR,
One M & T Plaza,
Buffalo, New York,
Attorneys for M & T Trust Company;
WILLIAM H. GARDNER, Esq. of counsel.

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WITNESSES

For the Petitioner:	Dr.	Cr.	Redr.	Recr.
George W. Sheldon	38	59	85	90
Robert F. Spitzmiller Jr.	96	161		

EXHIBITS

For the Petitioner:		Ident.	Evid.
Ex. #1	Transcript of proceedings taken April 16, 1971.		37
Ex. #2	Small White card of Accounts Receiveables	41	
Ex. #3A & #3B	Credit Memo wirtten by Mr. Spitzmiller consisting of two pages.	46	158
Ex. #4	M & T Promisory Note for $35,000 dated 12-12-69	47	149
Ex. #5	"Security Agreement(Chattel Mortgage)" dated 1-16-69.	47	150
Ex. #6	Letter to Mr. Jack Robinson from Robert F. Spitzmiller, Jr., dated December 12, 1969 consisting of one page and "Loan Agreement" dated December 12, 1969 consisting of four pages.	48	150
Ex. #6A	"Security Agreement" dated December 12, 1969.	53	150
Ex. #6B	Original of Letter to Mr. Jack Robinson from Robert Spitzmiller, Jr., dated December 12, 1969 consisting of two pages.	54	151
Ex. #6C	"Security Agreement" dated January 16, 1969.	54	151

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EXHIBITS

For the Petitioner: Cont'd.		Ident.	Evid.
Ex. #6D	"Inventory and Accounts Receiveable Security Agreement" dated January 16, 1969.	54	151
Ex. #7	"Individual Financial Statement" dated June 5, 1970.	48	150
Ex. #8	"Individual Financial Statement" dated 5-5-69.	48	152
Ex. #9	Photostate of a document bearing "Personal Financial Statement" dated 7-16-68.	48	187
Ex. #9A	Original of a document bearing "Personal Financial Statement" dated 7-16-68.	186	187
Ex. #10A	Card purporting to be a Manufacturers and Traders Trust Company printed form card.	112	152
Ex. #10B	Card purporting to be a Manufacturers and Traders Trust Company printed form card.	113	152

REFEREE McGUIRE: Mrs. Paczynski, come up here to be sworn in, please.

(Whereupon, the Reporter was then sworn by the Referee.)

REFEREE McGUIRE: You may proceed, Mr. Gardner.

MR. SHELDON: Your Honor, before Mr. Gardner proceeds I have a few motions to make. If you will bear with me I will --

At the outset, your Honor, I move to dismiss this proceeding on the basis that the Objections to Discharge of the Bankrupt filed under Section 14 of the Bankruptcy Act and Petition for Determination of Dischargeability under Section 17-c(2) of the Bankruptcy Act was not filed within the time period set in the notice of first meeting of creditors. The last date to file said petition and said objections was on June 8th 1971. I was served with copy of said objections and said petition on June 8th 1971. But I recently find checking the

original filed with this Court I find that although it may have been filed on June 8th 1971 no filing fee as required by the Bankruptcy Act was paid on that date. Under Section 40c.(3) of the Bankruptcy Act, "Charges for the expense of special services relating to or in connection with proceedings before referees shall be made and collected by the referees in accordance with regulations to be prescribed by the Director, with the approval of the conference, and the proceeds shall be paid by the referees of the clerk for transmission to the Treasury of the United States for deposit in the referees' expense fund.". It is my understanding that the schedule of special charges to be made under Section 40c.(3) of the Bankruptcy Act for deposit to the referees' salary and expense fund includes the following, "For each set of objections

filed to a discharge --", and so on, and so forth, -- "$10.00 to be paid by the objecting creditor provided that no such charge shall be made for filing objections to a discharge by the United States Attorney.", and so on. Collier in Volume 2 at page 1561 specifically states with respect to references on filing fees that "The Act requires the sums for the referees' salary and expense fund to be deposited when the petition is filed.". Now, first of all, the petition referred to at this point is the original petition in a bankruptcy proceeding. But they feel it is so important, at least Collier did that he put the words "is filed" in italics. The Court is well aware that it would not accept the reclamation proceeding or original petition in bankruptcy without the necessary filing fees without a pauper's oath. I don't think

the Manufacturer's and Traders Trust Company is indicating it was a pauper. There was no affidavit as to any reason why the filing fee could not be paid on June 8th. The fact that the Court accepted the paper does not make it obviously filed within the necessary time period.

In addition, the ten dollar fee was not paid for the second part of this proceeding which is the Petition for Determination of Dischargeability under Section 17-c(2) of the Bankruptcy Act. And the Court is again aware that this is a requirement. The bank and its counsel know when filing papers where a fee is required, that it must be paid at the time of filing. The Court cannot enter a judgement without the paying of a filing fee. The County Clerk's Office cannot record a deed or a mortgage paid without the paying of the filing

fee. These are statutory requirements. The creditor in this particular instance or its counsel has not complied with Section 40c.(3) and the schedule of charges with respect thereto.

I ask that the proceeding be dismissed.

MR. GARDNER: May I be heard, your Honor?

REFEREE McGUIRE: Mr. Gardner.

MR. GARDNER: Your Honor, I have been going through my file with regard to the fact mentioned by Mr. Sheldon that the filing fee was not paid on time. I find no reference. I assume the facts are correct, however. I assume that when the - and this is subject to further checking of the records of which I would ask the Court to take judicial notice, I assume, however, for the moment that the petition was filed on the last day and that through oversight the filing fee was not paid. In the past this Court in a situation

such as this has generally accepted a paper in the pending proceeding and filed it and has thereafter contacted the lawyer and advised the lawyer that he forgot to pay the fee. I am talking of a situation as here where the lawyer was not personally present filing the document but had it filed by messenger, and the lawyer has immediately apologized and immediately sent over the ten dollars that was required. I think that is what happened in this case. Now, I am frankly unaware whether the fee that was paid was ten dollars or twenty dollars. If only the ten dollars was paid it was only because whoever was the clerk contacting our office --

REFEREE McGUIRE: I am wondering --

MR. GARDNER: -- mentioned this is a requirement.

REFEREE McGUIRE: I am wondering, was a fifty dollar indemnity fee also required in this case? Did you check with my office

when this was filed, Mr. Sheldon?

MR. SHELDON: When I checked they could not find a record. They recently found a record that twenty dollars was paid the next day on June 9th.

REFEREE McGUIRE: On June 9th. All right.

MR. SHELDON: Excuse me. So far as the fifty dollars, I don't know anything about that.

REFEREE McGUIRE: We have had some problem here because we have had attorneys come over with the ten dollar filing fee, we also require the fifty dollars indemnity fee by local practice, and the lawyers haven't had sixty dollars but have had ten dollars and consequently the full sum was paid at a later time.

MR. GARDNER: Your Honor, my file does reflect a cover letter to your Honor of June 7th indicating - there is no mention of any filing fee beyond the fifty dollars. I mentioned the fifty dollar

filing fee. The Court was adequately protected by the fifty dollars which was filed followed up by the immediate payment of the twenty dollars thereafter, so there was no question that the necessary fees had been paid. Number 2, however, assuming the fees were not paid in the matter in a timely manner, for purposes of argument, the provision of the Bankruptcy Act is clearly mandatory that requires the Court to collect these fees, and in an event of an audit of this Court's records by the Administrative Office of the United States Court the fees would have to be collected or some corrective action taken. I cannot believe that the affect as counsel would have it is to cancel the very substantial rights of a creditor involving thousands upon thousands of dollars due to an oversight of paying the twenty dollars sum on the

day of filing as opposed to the day thereafter. I think it is perhaps so, your Honor, and I say this as a matter of logic because I had not been aware of this motion before this morning, I think perhaps so this Court might have properly refused to file the paper without the twenty dollar fee and of course if that had happened my messenger would have called me on the telephone and I would have immediately corrected it by getting the twenty dollars over and the paper would have been filed in a timely manner, and this issue would not have been raised.

I would suggest that the Court did file the paper, and as a result if there was any error it should not be held against the petitioner.

Beyond that and going more to the instance of the matter, the Act permits this Court to extend the time for filing of a petition in such a matter as this. Quite clearly the

purpose of establishing a time limit for the fling of this type of petition is so there can be some knowledge on the part of all concerned, including the bankrupt who is seeking a discharge, including the Court who at some point otherwise seeking a discharge or other disposing of the matter. There is no finality about the date. That purpose of the estate asset of the Bankruptcy Act has been fully served by the filing of the bankruptcy petition within the time limited by this Court.

We need not concern ourselves with whether this Court would proceed with this hearing or dismiss if the Trust Company had refused to pay the filing fee. That is not the case before us. I would respectfully suggest that thepurposes of the Bankruptcy Act do not require the dismissal of the proceeding as indicated

I note significantly that counsel

has indicated no case where the failure to pay the filing fee simultaneously with the filing of the document resulted in a dismissal of the proceeding.

MR. SHELDON: Your Honor, if I may be heard.

REFEREE McGUIRE: Yes.

MR. SHELDON: First of all, the filing fees are not paid to the Bankruptcy Court. The filing fees are paid to the Clerk of the United States District Court for the Western District of New York. And if this paper had been filed or attempted to have been filed with that particular officer it would not have been accepted without the filing fee.

REFEREE McGUIRE: I am not sure that is correct. We quite often have to collect fees on papers accepted by the clerk referred to this office on which --

MR. SHELDON: If they make a mistake.

REFEREE McGUIRE: That is right.

MR. SHELDON: If the Court makes a mistake. Now, I did not want to bring this

up because Courts do make mistakes obviously.

REFEREE McGUIRE: That is why we have Courts of Appeal.

MR. SHELDON: Right.

And if we are going to say that the Court made a mistake and not notifying Mr. Gardner's office that the ten dollars should have been paid or the twenty dollars and it was not and accepted this without the fee might be an error also. I could take advantage of the Court's mistake and say we have no proceeding today and that an order of discharge was granted in this particular proceeding. Now, I am not saying that. But I say that if Mr. Gardner's whole premise here was that the Court made a mistake and the creditor in the substantial amount of thirty-five dollars should not be granted then I am going to say that my client, that a hundred thousand dollars

of alleged debts should not be granted because an order of discharge was granted in this proceeding on the 31st day of October in error. Now, I know it was an error. The Court did not know it until I reported it to the Court. The fact of the matter is that if we are going on errors of the Court and errors of what happened then there is no proceeding today, because an error for Mr. Gardner's client is just as well an error for my client. An extension of time can only be granted for the filing of paper on application, and there was no application.

REFEREE McGUIRE: I think the point was that the application could have been made.

MR. SHELDON: But it was not.

REFEREE McGUIRE: If the filing was refused.

MR. SHELDON: But the application was not made. And it would have been not orally but I assume in writing, on the record somewhere, and I would have had some

notice of that.

I am a little concerned about a paper that was dated June 7th and filed on June 8th, and yet a letter from Mr. Gardner's office is dated June 7th.regarding indemnity. The dates confuse me.

Another thing Mr. Gardner pointed out about extensions of time. I don't believe a creditor if it misses the last day of filing a proof of claim can get an extension until there is some particular matter --

REFEREE McGUIRE: That is under 57, Mr. Sheldon. I believe there is --

MR. SHELDON: Unless there is a matter before the Court involving that particular claim. But not just for inadvertence or mistake.

REFEREE McGUIRE: Well, that is on the filing of a claim. However, I do understand there is discretion in the Court to permit the late filing of objections

for discharge.

MR. SHELDON: Your Honor, we are all stuck with timeliness. One day on a four month preference is very relevant in this Court. So if we are going on one day and if Mr. Gardner feels it is of no concern. I am saying this paper cannot be accepted by this Court without the filing fee of twenty dollars, and that the curing of it by paying later does not make it a good filing within the meaning of the statute. Otherwise this Court's obligation would be to run after people continually if they came over here on the last date and if they lost or moved out you would be stuck without it. The proceeding has specific rules to the referee or to the Bankruptcy Court. The District Court Judge says these are the fees that have to be paid when the petition is filed. And it was not paid when the petition was filed. And if it was

a mistake of the Court with respect to the allowing of the petition to be filed, then I ask that the Court recognizes its mistake also in setting forth an order of discharge to the bankrupt and granting the discharge.

REFEREE McGUIRE: Did you have any further motions, Mr. Sheldon?

MR. SHELDON: Yes. I have five other motions.

MR. GARDNER: Your Honor, this is the position of the bank. The order of the Court required filing on June 8th 1971. The filing occurred on June 8th 1971. That is our position.

REFEREE McGUIRE: Would you like to make your remaining motions at this time, Mr. Sheldon?

MR. SHELDON: Yes.

Your Honor, I am going to set this off in two different brackets; one, to attack first the objections itself, and secondly, the petition for determination of discharge. I

have three motions with respect to objections to discharge. Number 1, as to the ground I move for a discharge, I move for a dismissal of this proceeding and the granting of the discharge to the bank on the grounds that the bankrupt - as to the ground that the bankrupt has committed an offense under 18 United States Code, Section 152, in that he has knowingly and fraudulently made a false oath in relation to this bankruptcy proceeding. There is nothing contained in the objections filed that would as a matter of law support that allegation. Also it must be related - a false oath must be related to a material matter. There is no contention in these papers as to concealment of assets, and the like, but rather only two basic items neither of which has any effect on the bankrupt's estate. The two items are as follows: 1, whether the bankrupt read the alleged instruments he

signed on December 12 of 1969, and 2, whether he told the officer of the bank in January of 1971 that he had accounts receiveable. The first item certainly has no relevancy so far as a false oath is concerned. It talks about Mr. Spitzmiller's petition that questions involved, "Did you sign this?" "Did he read it to you?", "Did you understand?", things like that. What does that have to do with the assets in this proceeding? Nothing whatsoever. It is not relevant to anything. It is not relevant to the bankrupt's estate, to the other creditors or anything. As to the second item, whether he told the officers of the bank in January of 1971 that he had accounts receiveable. That item answers for itself in that the Manufacturer's and Traders Trust Com has not alleged that in fact were accounts receiveable.

ever say that in this petition, and that same were concealed at the time of the filing of the petition in scheduled bankruptcy. They don't argue that we don't have any accounts receiveable at all. They are just saying that when Mr. Gardner asked the questions of Mr. Robinson at the adjourned - I think the adjourned first meeting of creditors that he may not have answered them correctly. I tell you I read over the questions, and Bill is a good friend of mine as you know, but when you look at these questions with double negatives I don't think I could have answered them if they were not in writing. How would you answer a question, page 60, number (o), "There is no question for the record that you gave no such information to Mr. Spitzmiller on that day, January 11th --"? How would you know what the answer to the

question is? You don't know what th question is if you understood English. Unfortunately, Mr. Robinson does not understand English too well which was brought out at the hearing which we had. Look a little farther. Starting on page 4 where it says page 57, "And you never told him --" - page 4 of Mr. Spitzmiller's petition in reference to page 57 where it says (h), "Q. And you never told him that you did not have any payable, did you?", "A. No.". This is the type of questions that they are basing the alleged false oath on. And I think that as to that phase of it the Court can look through these questions which are specific questions that he is claiming in his petition were the ones on which a false oath was invented. For the most part these questions are poorly phrased and not relevant to the proceeding or to the assets or anything like that.

What difference does it make if he read it or not from that particular standpoint as to the false oath. It may have been relevant on another ground, but this is in reference to this right now. I think as a matter of law right on the face of the petition there is nothing contained in there that reflects a false oath at all, and surely not a crime as it is put in this petition punishable by imprisonment under Title 18. To be honest with you, your Honor, the questions asked in the same wording here, and not seeing them in writing, and not being grammatically correct, they are almost impossible to answer.

My next motion is to the ground of the bankrupt while engaged in business obtained for such business money or property on credit on a fraudulent statement in writing. I move to dismiss this ground in that as a matter

of law the loan allegedly made on December 12th 1969 was in fact a fraudulent loan, not on the part of the bankrupt, but on the part of the Manufacturer's and Traders Trust Company in that the bankrupt was told to sign an instrument which in fact was false within the knowledge of the bank's officer. The loan agreement of December 12th 1969, which I believe was in evidence at the hearing, indicated - and I am quoting from it, and I quote, "The proceeds of this load are to be used solely for the purchase of inventory and for the carrying of Accounts Receiveable". There were no proceeds of that loan at all. Actual proceeds within which to buy inventory, there was none. No cash was given, no deposit made to his account on that day. None whatsoever. They are saying that he used a false financial statement.

The loan was made in December, they stated, December 12th 1969. The statement that they are referring to was as of April 25th of 1969, and I think delivered to the bank sometime within the first couple of days - the first five days in the month of May of 1969, this is the statement they are relying on in this petition. I would think they would use in their number 8 on page 7 beginning with all these different items that in fact there is a loan to Mr. Robinson in the same amount given earlier. As a matter of fact, Mr. Robinson even paid seven hundred dollars, but that will be brough out in his testimony later. I don't know if that particular Exhibit was in evidence. But I am moving to dismiss on the grounds that as a matter of law the facts as stated here with the testimony that is on record with the Court shows that in

fact it was a fraudulent loan on the part of the Manufacturer's and Traders Trust Company, not on the part of the bankrupt. The bank's hands were not clean at all here. They don't even make any reference in that instrument, which I believe is introduced in evidence, that he was indebted to the bank. No reference at all. Further, under Section 14-c(3), I believe it refers to two things. Number 1, that the financial statement must be in writing. And yet page 9, the reference in Mr. Spitzmiller's petition indicates that the bankrupt - I'm sorry - page 8 "assured Robert Spitzmiller", "assured" I guess that would mean orally. So for relying on so called amendments to that financial statement it has to be in writing and orally has no basis at all. Further, point 2, that you have to be a businessman. And I think that is a close question here as to

whether in fact Mr. Robinson was a businessman. He was a commissioned salesman, I don't think there is any doubt about that, commissions were paid for the sale of certain goods that he handled, and that he did I believe testify here that there came occasions when in order to save his commission he had to pick up the goods from one place and try to sell them to another. That is the extent of the business. It was a very minor part of the daily operations anddaily routine and came about basically to save his commissions where he took a risk. So I am making the motion to dismiss this ground that on the basis, number 1, the loan was fraudulent on the part of the creditor, and number 2, that any representations that they are trying to rely on would have been oral representations as the written financial statement was given some eight months

before. Further that they must have relied on the financial statement, and they show no facts as to reliance. Just a simple statement they relied. The word "rely" is the only thing. They don't back it up in any way. They just say they "rely".

My third motion on the grounds as to their third allegation as to objections to discharge pertaining to the Beneficial Finance Company and allegedly false financial statement.

REFEREE McGUIRE: What page does that start?

MR. SHELDON: I believe that starts on page 11, point 13.

REFEREE McGUIRE: I see. Yes.

MR. SHELDON: The Court is well aware it has to be a business loan and it has to be in writing. This financial statement, there is no allegation here that says that it does say that in fact it was a business loan. I don't know too many people that go to Beneficial

Finance Company and pay twenty-four percent interest to get a business loan. Further, the amount is limited. The interest, if any, paid out of that loan, this interest expense that might have gone to this alleged business loan was so nominal in comparison to the amount of the loan that it is not of any significance, and there is nothing in the items indicated in the petition on its face that as a matter of law would even bring up a prima facie case. As a matter of law not for business purpose and is not a ground then for objection to this. It is not in the finding here, no exhibit, no nothing, which shows it was a business loan on its face.

I am sorry to take up the Court's time.

I have one more motion with respect to the determination of dischargeability and all my motions are asking for a

dismissal of the appropriate portion of this pleading.

As the Court is aware the financial statement under 14-c(3) must be in writing. There is no alteration in that. It is a requirement, in writing. And yet on its face of the petition on Section 16 of this pleading the words "he had represented orally to the Trust Company", "represented orally", fifth line down on section 16, on its face "orally" takes it right out, that as a matter of law it should be dismissed. I also repeat with respect to these grounds, this particular thing, all the argument that I made with respect to my second motion to dismiss pertaining to the loan itself. I am sorry if I misstated to the Court, I believe although the wording is the same approximately, 17-c(2).

REFEREE McGUIRE: 17-c(2).

MR. SHELDON: 17-c(2). In reliance and in writing.

Those are my four motions, your Honor. I respectfully submit that these proceedings be dismissed on those bases.

MR. GARDNER: I will try to be brief, your Honor.

Referring first to the last, the simplicity of Section 17-b(2) refers to the discharge not releasing a debt for any indebtedness which are, and I quote, "liabilities for obtaining money or property by false pretenses or false representations", and then it goes on in the disjunctive to refer to obtaining money or property on credit on a materially false statement in writing, it is our position, whether it is right or wrong, this Court will have to determine, that oral misrepresentations are material and relevant under Section 17 whereas they would not

be under Section 14. The Court will have to make that judgement. I have considered it carefully and I think it is correct. With regard to the Beneficial Finance loan. Again, moving backward on the arguments. This is a matter of proof , and I suggest that the Court is not in a position to make a decision on that as yet. Secondly, counsel argues that the objections under Section 14 are clearly on the face of the petition based not on a false written financial statement but upon oral misrepresentations, as he puts it, because a financial statement had been given in prior months. The financial statement as this Court will see in the proof specifies that it is to be kept on file and will be consulted by the bank and will be continued to be relied upon unless further information is given. The proof to be presented to this Court will be that the bank

officer in fact did consult the financial statement and did rely upon it in making any further loans. I would suggest again this is a matter of proof and is not appropriate for a motion to dismiss in the beginning of the case.

Now, with respect to the argument that counsel's questions had been so inarticulately phrased, as my friend Mr. Sheldon has indicated, and with respect to the argument that the bank has itself committed fraud,as a matter of law I respectfully suggest this is pure nonsense, or put it more kindly it is an argument that is appropriate to be made to the Court at the conclusion of the proof on the merits. It is not an argument to be made as a matter of law at the beginning

I urge, your Honor, that the motion to dismiss be denied.

REFEREE McGUIRE: On the first motion to dismiss

on the filing of the papers, the motion is denied. The second motion on the sufficiency of the alleging of a false oath under Section 152, of course without passing on the merits but only on the sufficiency of the papers themselves, I will deny that motion. With respect to the three arguments on the financial statements, again not on the merits but on the sufficiency of the papers, I will deny the motion. With respect to the false statement given to Beneficial Finance, the alleged false statement to Beneficial Finance, again not passing on the merits but only on the sufficiency, I will deny the motion. With respect to the motion to dismiss the 17-c(2) dischargeability, non-dischargeability claim, I will reserve decision.

You, of course, have an exception to the Court's ruling, Mr. Sheldon.

MR. SHELDON: Thank you, your Honor.

REFEREE McGUIRE: Mr. Gardner.

MR. GARDNER: Does your Honor have the original of the transcript of the proceedings before this Court of April 16, 1971?

REFEREE McGUIRE: Yes, I do.

MR. GARDNER: I hand up to the Court a stipulation executed by counsel today with regard to that transcript. On the basis of the stipulation I offer as an exhibit in evidence the original of the transcript of the hearings before this Court on the examination of the bankrupt Jack Robinson before this Court on April 16, 1971.

REFEREE McGUIRE: Mr. Sheldon, any objection?

MR. SHELDON: No objection.

MR. GARDNER: Should we have that marked, your Honor?

REFEREE McGUIRE: I think we should.

That will be marked then Petitioner's Exhibit 1 in evidence, by stipulation, is that correct?

MR. GARDNER: Yes, your Honor.

MR. SHELDON: That is correct, your Honor.

(Whereupon, Transcript of proceedings taken on April 16, 1971 was then marked Petitioner Exhibit No. 1 and received in evidence.)

MR. GARDNER: Mr. George Sheldon, will you take the stand, please.

GEORGE W. SHELDON (9 Louisa Parkway, North Tonawanda, New York), having been first duly called and sworn as a witness on behalf of the Petitioner, testified as follows:

DIRECT EXAMINATION BY MR. GARDNER:

Q. Mr. Sheldon, what is your employment?

A. I'm Vice President of the Manufacturer's and Traders Trust Company.

Q. And did you have that title on January 13th of this year?

A. Yes.

Q. And as of January 13th where were you assigned and what were your duties?

A. My responsibilities are a Zone Supervisor located out of the Midtown Office, 15 East Genesee Street, Buffalo, New York. The Zone Supervisor's responsibilities has the complete responsibilities of bank branch offices, one being the Delaware Office.

Q. And is the Delaware Office where Robert Spitzmiller is assigned?

A. He's not assigned to that office today. He was at that time.

Q. I see. And is it at that office where you had a loan outstanding to the bankrupt Jack Robinson?

A. Yes.

Q. Did there come a time on January 13th 1971 when you had occasion to meet with Jack Robinson, his attorney Ira Pressman and Mr. Spitzmiller?

A. Yes.

Q. And where did that meeting take place?

A. At my office at 15 East Genesee Street.

Q. Do you approximately when in the day it was?

A. I believe it was in the morning.

Q. Will you state to the best of your recollection what occurred at that meeting?

A. We met with Mr. Robinson and his counsel at the request of Mr. Spitzmiller to review this loan. As a matter of fact, I believe, if my memory serves my right, we had asked Mr. Robinson to bring counsel with him so that we could discuss what we were concerned about at that point about this particular loan.

Q. Did you engage in some conversation with the gentleman present at that time?

A. Yes, sir.

Q. And apart from any opening greetings and background conversation did there come a time when there was a discussion regarding any accounts receiveable?

A. Yes, sir.

Q. Will you direct yourself to that discussion and state to the Court what occurred?

A. We had at that time collateral to our loan a certain number of dollars in accounts receiveable. And I was discussing with Mr. Robinson and Mr. Spitzmiller these accounts receiveable and trying to find out how much they were at that time and how we could collect them so that we could pay off our loan. And in our discussion we had a list of these accounts receiveable. The point in our discussion was hopefully I could be helpful in collecting some of these accounts. Seeing this list there were names that coincidentally we were familiar with. One, if I remember right, would be the Tops Market - or the Niagara Frontier Services group. And I had offered at that time to call Armando Castellani, the Chairman of Niagara Frontier Services, and the purpose would be to ask Armando what the amount of the account receiveable was at that particular time and if there could be some way he could pay it to Mr. Robinson so in turn Mr. Robinson could pay it to us.

MR. GARDNER: Could you wait just a moment, Mr. Sheldon.

Would you mark that as an exhibit, please, the card.

(Whereupon, a small white card purporting to list accounts receivabl was then marked Petitioner Exhibit No. 2 for identification.)

BY MR. GARDNER:

Q. Mr. Sheldon, before you go on, I show you Petitioner Exhibit 2 for identification, and ask you to examine the information on the other side. Do you recognize that card?

A. Yes, I do.

Q. What is that card?

A. This is a list of the accounts receiveable that we were told Mr. Robinson had at that particular time.

Q. And was this card in your possession or at the meeting on January 13th?

A. Yes, sir.

Q. And were you referring to it yourself?

A. That's right, sir.

Q. And did you have a discussion with Mr. Robinson regarding specific items on that card?

A. Yes, sir.

Q. And did you ask Mr. Robinson whether or not those were accounts receiveable of his?

A. Yes, I did, sir.
Q. And what did he say?
A. His answer at that time was that they were his accounts receiveable.
Q. Did there come up in your discussions any reference to a question whether the accounts receiveable belonged to him personally or to New York Commodities, Inc.?
A. Yes, sir.
Q. And what was that discussion?
A. The discussion was that we knew at that time that Mr. Robinson was in some way affiliated or employed by this Commodity company. And my concern at that time was that the accounts receiveable we had were his and that the collateral that we had against our loan was the accounts receiveable and to try to collect them to get our loan paid.
Q. And did you ask him specifically whether these particular accounts belonged to him as opposed to belonging to New York Commodities?
A. Yes, I did, sir.
Q. What did he say?
A. He said they were his accounts receiveable.
Q. His personally?
A. His personally.

Q. Does this card refresh your recollection with respect to particular - with respect to the identity by name and amount of the particular accounts?

A. Yes, sir.

Q. Can you state for the record what were the accounts receivable in terms of the names and the amounts of the allegedly owing?

A. Niagara Frontier Services, fifty-two hundred dollars, Buffalo Butter and Egg Company, thirty-five hundred dollars, Park Edge, twenty-eight hundred dollars, Malecki forty-nine hundred dollars, Twin Fair forty-five hundred dollars, Loblaws sixty-six hundred dollars, Pasco Meat ninety-five hundred dollars, Wardynski eleven thousand dollars, Tripi thirty-six hundred dollars, showing a total of fifty-one thousand six hundred dollars.

Q. Now, there is reference on Exhibit 2, Mr. Sheldon, to some names written in ink. Just to clarify the record, can you tell us what those names are and why they are there if you know?

A. Yes. The names are officers other than myself of the Trust Company written in ink alongside the account receivable.

Q. And this is in respect to four particular accounts, is that right?

A. That's right, sir.

Q. And do you know whose handwriting those names are written in?

A. Yes. It's my handwriting.

Q. And was that on the card or placed on the card during the course of that conference?

A. Yes, it was, sir.

Q. Was there some purpose for that?

A. Yes, sir.

Q. And what was that?

A. The purpose of our meeting again was to attempt to find out where we stood with our loan and cooperatively assist in collecting these accounts receiveable. I knew that these particular officers, for example, Mr. Harding knew someone at Buffalo Butter and Egg, and that Mr. Craig knew somebody at the Malecki Company, and that Mr. Johannes knew somebody at the Loblaw Company, and again Mr. Johannes knew somebody at the Tripi Company, hoping that I could call these officers and ask them to do the same thing that I had attempted to do with Mr. Castellani in getting Mr. Robinson paid for monies owed him as fast as we could so that we could get our loan paid.

Q. Now, I believe you indicated before that you offered to call

someone in the course of your conference with Mr. Robinson, and this was Mr. Castellani, was it?

A. Yes, sir.

Q. This was conversation you had with Mr. Robinson at the time, is that right?

A. And Mr. Pressman, the attorney.

Q. And in connection with your request for permission or his approval of your calling Mr. Castellani, what did Mr. Robinson say?

A. He asked that we not do it at that time, and the reason being that he was concerned then about doing future business. It would be unusual for the bank to make this phone call at that time. He requested that we not do it, andhis attorney also stated that he would like to talk further to Mr. Robinson.

Q. Before the attorney and Mr. Robinson left was there any discussion between you and Mr. Robinson regarding your having some doubts as to the validity of th[illegible]e accounts receiveable?

A. I don't believe that I expressed myself openly that way at that meeting.

MR. GARDNER: Would you mark this exhibit 3A for identification, and the following or as 3B

(Whereupon, typewritten document purporting to be Credit Memo written up by Mr. Spitzmiller, consisting of two pages, was then marked Petitioner Exhibit No. 3A and 3B respectively for identification.)

REFEREE McGUIRE: That meeting was on January 13th?

MR. GARDNER: January 13th 1971, yes, your Honor.

BY MR. GARDNER:

Q. Mr. Sheldon, I show you two sheets of paper marked respectively Petitioner Exhibit 3A and 3B for identification, and ask you if you recognize that record or if you recognize the type of record?

A. Yes, sir.

Q. What is it, please?

A. This is a credit memo written up by Mr. Spitzmiller as required by the Trust Company after any conversation or any conversation with a customer and is to be put into our files.

Q. Now, referring to Exhibit 3B specifically, would you read to yourself some of the material there and see if that refreshes your recollection as to the conference we just mentioned?

MR. GARDNER: While the witness is reading I would like to, if I may, perhaps save all of our time by marking a number of exhibits before the Court that were before the Court in --

REFEREE McGUIRE: The prior examination?

MR. GARDNER: -- the prior examination.

THE WITNESS: I read the second page.

MR. GARDNER: Wait just a moment, Mr. Sheldon. Would you mark that Exhibit 4.

(Whereupon, document purporting to be Manufacturers & Traders Trust Co.Promisory Note in amount of thirty-five thousand dollars dated December 12, 1969 was then marked Petitioner Exhibit No. 4 for identification.)

(Whereupon, document bearing"Securi ty Agreement(Chattel Mortgage)" dated 1-16-69 was then marked Petitioner Exhi bit 5 for identification.)

MR. GARDNER: May I have one moment, your Honor?

REFEREE McGUIRE: Of course.

MR. GARDNER: Mark these, please, for identification.

(Whereupon, carbon copy of a Letter to Mr. Jack Robinson from Robert F. Spitzmiller, Jr., bearing date of December 12, 1969, consisting of one page, and document purporting to be "Loan Agreement" bearing date of December 12, 1969, consisting of four pages, was then marked Petitioner Exhibit No. 6 for identification.)

(Whereupon, document bearing "Individual Financial Statement", bearing date of June 5, 1970, was then marked Petitioner Exhibit No. 7 for identification.)

(Whereupon, document bearing "Individual Financial Statement", bearing date of 5-5-69, was then marked Petitioner Exhibit No. 8 for identification.)

(Whereupon, photostat of a document bearing 'Personal Financial Statement", bearing date of 7-16-68 was then marked Petitioner Exhibit No. 9 for identification.)

MR. GARDNER: Your Honor, for the record, I have marked the following exhibits which were previously marked before this Court on April 16th as Exhibits in this proceeding. Former Exhibit 1 has been marked as Petitioner Exhibit 4, former Exhibit 5 has been marked Petitioner Exhibit 6, former Exhibit - correction, I'm sorry - former Exhibit 2 has been marked Exhibit 5, former Exhibit 3 has been marked Petitioner Exhibit 6, former Exhibit 4 has been marked Petitioner Exhibit 7.

MR. SHELDON: Excuse me. Do we have an Exhibit 4?

REFEREE McGUIRE: Former Exhibit 1. We have an Exhibit 3 for identification.

MR. SHELDON: I'm sorry. Exhibit 4 is old Exhibit 1, is that right?

MR. GARDNER: That is right.

MR. SHELDON: Okay.

MR. GARDNER: As I say, former Exhibit 7 has been marked - correction - former

Exhibit 4 has been marked Petitioner Exhibit 7.

REFEREE McGUIRE: Yes.

MR. GARDNER: Former Exhibit 5 has been marked Exhibit 8, and former Exhibit 6 has been marked Petitioner Exhibit 9.

I would request consent that these be marked in evidence. And I suggest that I have the clerk mark them later on.

MR. SHELDON: I want to review the documents.

MR. GARDNER: All right.

I withdraw that.

MR. SHELDON: They have nothing to do with Mr. Sheldon's examination, do they, at this point?

MR. GARDNER: I may refer to the documents in talking to Mr. Sheldon, yes.

I withdraw my offer.

BY MR. GARDNER:

Q. Now, first of all, was your recollection refreshed by Exhibit 3B?

A. Yes, sir.

Q. Can you now tell me what discussion, if any, occurred between you and Mr. Robinson regarding your concerns as to the ligitimacy or accuracy as to the information he had given you?

A. I still don't believe that I expressed a concern or concern to Mr. Robinson or his attorney openly at that meeting. However, prior to that meeting we were to meet with Mr. Robinson to again review this loan, and Mr. Robinson did not show up at that meeting, and Mr. Spitzmiller and myself I believe through the assistance of one or two or more of these other people attempted to confirm some of these accounts receiveables and could not do it.

Q. I see.

A. So that I have some concern going into the meeting at my office with Mr. Robinson,and Mr. Spitzmiller,and his attorney - Mr. Robinson's attorney.

REFEREE McGUIRE: What do you mean that they could not confirm them? Had there been some direct inquiry as to some of these?

THE WITNESS: Yes. I don't know whether I -- I don't know whether I made a direct call from Mr. Spitzmiller's office

myself, but I had another officer call one or two of these customers and say, "I understand that you owe Jack Robinson forty-nine hundred dollars for some hams.", I believe it was, and they at that time on the phone went to their records and said, "No, we don't.", or they indicated to me, and I believe this is where I learned that he was associated in some way with this other company. And then my concern was right away then are these receiveables or aren't they receiveables. And we attempted at that time to verify this, and came out at the meeting and asked Mr. Robinson, "Whose are they?", and that's when he said they were his. And then at that meeting I tried to firm up again an offer - and offered to call, for example, Mr. Castellani and ask if they were his receiveables, and we wanted them collected so that we could get our loan paid, and it was

an offer of help at that time, but it didn't work.

REFEREE McGUIRE: But you still believe you did not openly express your doubts to Mr. Robinson?

THE WITNESS: I don't believe I did at that meeting.

MR. GARDNER: Your Honor, if I may have the indulgence of the Court, I would like to simplify the examination by marking another document.

REFEREE McGUIRE: This will be Petitioner Exhibit 10.

MR. GARDNER: No, your Honor. This will be Petitioner Exhibit 6A, 6B. I will advise the Court.

Would you mark this document Exhibit 6A for identification. Then mark this as 6B for identification.

(Whereupon, document bearing "Security Agreement," bearing date of December 12, 1969, was then marked Petitioner Exhibit No.6A for identification.)

(Whereupon, document purporting to be original of a Letter to Mr. Jack Robinson from Robert Spitzmiller, Jr., bearing date of December 12, 1969, consisting of two pages, was then marked Petitioner Exhibit 6B for identification.)

MR. GARDNER: Mark this as 6C.

(Whereupon, document bearing "Security Agreement", bearing date of January 16, 1969, was then marked Petitioner Exhibit 6C for identification.)

MR. GARDNER: Mark this as 6D.

(Whereupon, document bearing "Inventory and Accounts Receiveable Security Agreement", bearing date of January 16, 1969, was then marked Petitioner Exhibit 6D for identificatior

MR. GARDNER: Your Honor, for the record, I have marked as Exhibit 6A through 6D inclusive four documents which are attached to Petitioner Exhibit 6. Petitioner Exhibit 6 is a cover letter to which is directly attached a certain Loan Agreement which I have not marked separately. The separate markings identify respectively the Security Agreement (Inventory, Accounts, Contract Rights and Chattel Paper) which is marked Exhibit 6A; a letter to Mr. Robinson from Mr. Spitzmiller dated December 12, 1969 which is marked Exhibit 6B; a Security Agreement (Chattel Mortgage) dated January 16, 1969 marked Exhibit 6C; and finally an Inventory and Accounts Receiveable Security Agreement dated January 16, 1969 marked 6D. All of these papers were attached together and marked with one combined Exhibit No. 3 on the prior examination, your Honor.

BY MR. GARDNER:

Q. Mr. Sheldon, you have referred in your testimony to the fact that the bank had collateral on accounts receiveable. I show you Petitioner Exhibit 6A and 6D, and ask you if those two agreements or either of them represent the accounts receiveable security agreements you refer to?

A. Yes, sir.

Q. Have you looked at 6D?

A. Yes.

Q. There were two separate agreements, is that right?

A. Yes.

Q. And what is the date of 6A?

A. December 12, 1969.

Q. And the date of 6D?

A. The 16th day of January, 1969.

Q. And are these agreements on regular printed forms customarily used by the Trust Company and with which you are familiar

A. Yes, sir.

Q. And, to your knowledge, to what extent under 6A did the bank have security in accounts receiveable, if at all?

A. This form CLB-14 is a Security Agreement giving the bank a lien on inventory, accounts receiveable, contract rights, and chattel paper.

Q. Does the lien extend to specific accounts or to all the accounts of the bankrupt?

A. The agreement reads, "the proceeds --" --

Q. Would you look up two lines.

A. The agreement reads, "all of Debtor's accounts and contract rights, whether now existing or hereafter created or arising".

Q. And on 6D, that is a different form, is it not?

A. Yes, sir.

Q. And can you tell us the extent to which the bank held security interest in accounts receiveable under that form?

A. This form is also used when the bank takes collateral in inventory and accounts receiveable.

Q. Are you familiar with this form?

A. Yes, sir.

Q. Can you tell by looking at the form which paragraph it is that grants the security interest to the bank under that agreement?

A. That would be paragraph 4.

Q. And that is the reverse side of the first sheet, is that correct?

A. That's right, sir.

Q. I show you Exhibit 4 for identification. Have you ever seen

that before?

A. This particular note?

Q. Yes.

A. I really can't answer that.

Q. Okay. Now, Mr. Sheldon, just for the record, did you personally participate in the granting of any loans to Mr. Robinson?

A. Personally participate? As Zone Supervisor I'm responsible for the loans the bank officer puts on, and I probably was involved in the extent of approving Mr. Spitzmiller's action at the time the loan went on the books or any additions to, et cetera, but not necessarily specifically involved with handling the documents in detail.

Q. Have you ever had occasion to meet Mr. Robinson prior to the meeting of January 13th 1971 personally?

A. Not to the best of my knowledge.

Q. Do you have any specific recollection of any occasion prior to January 1971 when you were personally dealing with the Robinson loan, that you can recall?

A. Yes. I believe that I had had discussions with the previous Zone Supervisor on Mr. Robinson's loan only in reviewing all of the loans in this particular portfolio, and the previous Zone Supervisor stopping and discussing this one.

MR. GARDNER: Okay. Fine. Thank you very much. You may ask.

REFEREE McGUIRE: Mr. Sheldon.

CROSS EXAMINATION BY MR. SHELDON:

Q. Mr. Sheldon , how long have you worked for the Manufacturers and Traders Trust Company?

A. Approximately fifteen years.

Q. And what was your position prior to being the Zone Supervisc at the Midtown office?

A. I was a Vice President and Loan Officer.

Q. And where were you assigned?

A. Immediately preceding the zone responsibility, at the Midtown Office.

Q. And prior to being at the Midtown Office?

A. I was a Loan Officer at our One M & T Plaza Office.

Q. And were you assigned to a particular department at One M& T Plaza?

A. The One M & T Plaza is a branch of the M & T Loan.

Q. Were you assigned to the Commercial Loan Department?

A. I was assigned to the branch itself functioning as a Commercial Loan Officer.

Q. Now, as a Manager of an office is there a specific limitatio on authority to grant a loan?

A. We have specific limitations in all of our offices, depending on what office it might be.

Q. And were you the Zone Supervisor on December 1969 for the Delaware Office?

A. I don't believe so, sir.

Q. When did you become Zone Supervisor?

A. I believe it was January 1970.

Q. January 1970?

A. Yes, I believe so.

Q. And were there any loans granted to Mr. Robinson in January of 1970?

A. I don't know the exact dates of the loans.

Q. But you are sure as far as your discussions you probably approved Mr. Spitzmiller's action and granted the loan, isn't that correct?

MR. GARDNER: I don't believe the witness said -

REFEREE McGUIRE: Do you have an objection, Mr. Gardner?

MR. GARDNER: No.

THE WITNESS: I believe that the original loan was approved by the previous Zone Supervisor and was on the books at the time I took over this particular zone

and I believe that an increase in the loan was made during my early period as Zone Supervisor in the office.

BY MR. SHELDON:

Q. When did you become Zone Supervisor in the office?

A. I believe it was in January of 1970.

Q. And you are positive then that you reviewed this loan for the granting of the additional monies, is that right?

A. I'm not positive. To the best of my knowledge, yes.

Q. Recollection?

A. I believe that I would have reviewed it.

Q. And the rest of your testimony is to the best of your recollection too, is it not, Mr. Sheldon?

A. Yes, sir.

Q. Now, Mr. Sheldon, if I told you there was no loan granted after December 12th 1969, would you believe that you probably were not responsible for this loan?

A. If you're stating a fact, sir, it should be in the records.

Q. Well, in other words, your testimony that you were probably the responsible party is incorrect, isn't that correct?

A. I don't agree with you, sir. It's to the best of my knowledge.

Q. Do you know when you became Zone Supervisor?

A. I believe in January of 1970.
Q. You don't have any knowledge of when this loan was granted, is that correct?
A. I believe it was in the beginning part of the year, sir.
Q. Well, the beginning part of what year, sir?
A. Of 1970. The original loan or the increase?
Q. The increase?
A. The increase I believe was in the beginning part of 1970.
Q. Were you a Zone Supervisor at the Midtown Office in December of 1969?
A. I don't believe so, sir.
THE WITNESS: May I ask, if I might, your Honor, --
MR. SHELDON: No. You may not ask anything.
MR. GARDNER: Your Honor, I object to this. The notes are marked as exhibits. If the witness looks to refresh his recollection, I don't see any objection to that. And I, frankly, resent counsel's comment.
MR. SHELDON: Your Honor, I don't think the witness has a right to voluntarily without being asked a question state

anything he wants to, especially on cross.

REFEREE McGUIRE: Just wait until your counsel has had an opportunity to examine.

MR. GARDNER: I request that the witness be permitted to examine the original Exhibits 4 and 5.

MR. SHELDON: They have not been placed --

MR. GARDNER: They were marked for identification, and they were marked previously. There is no question to the ligitimacy.

REFEREE McGUIRE: Let Mr. Sheldon clear it up.

BY MR. SHELDON:

Q. Basically, Mr. Sheldon , you are not quite sure whether or not you were the responsible party who - whether you did or did not approve this loan, you are not quite sure?

A. I'm sure I was involved in the approving of the credit. I'm not sure exactly of dates.

Q. But if you were not the Zone Supervisor would you be involved in the credit?

A. At that time I may have been reviewing this with the previous Zone Supervisor knowing that I would have been the Zone Supervisor.

Q. Now, do you recall what authority Mr. Spitzmiller as Manager of the Delaware Office would have in granting loans to what amount?

A. Yes, sir. He has the authority to make a ten thousand dolla unsecured loan, a twenty-five thousand dollars secured loan, and authority with a loan committee in amounts over and above this.

Q. And would you be a member of the Loan Committee?

A. Yes, sir.

Q. And then for a loan of thirty-five thousand dollars Mr. Spitzmiller would have to come to you, is that correct, or to the Committee?

A. Yes, sir.

MR. GARDNER: Could we have an indication of the time which the question is directed to, whether it is now, as I understand it, or whether it is then?

MR. SHELDON: Then.

REFEREE McGUIRE: Your question was relating to January?

MR. SHELDON: December of 1969.

REFEREE McGUIRE: December 1969 and January of 1970.

THE WITNESS: In December of 1969 I do not believ

that I was the Zone Supervisor of that particular zone, and at that time I would not be knowledgeable of the loan responsibilities or authorities of the Delaware Office.

REFEREE McGUIRE: You would not know for sure as to that period of time?

THE WITNESS: That's right.

BY MR. SHELDON:

Q. In your experience working fifteen years with the bank, Mr. Sheldon, you have got some idea of the range, would that be approximately correct?

A. No. This varies, sir.

Q. By what extent does it vary?

A. Some officers could have fifty to a hundred thousand dollars Some individuals could have a hundred and fifty thousand dollar loan.

Q. But the manager of a particular office would have some authority to grant a loan?

A. I believe so.

Q. And the average of the minimal authority granted to a manager of your bank would be how much unsecured?

A. There's no maximum or minimums. It depends on the officer and the office.

Q. I appreciate that. But I mean you have some forty or fifty offices. Now, if you took the one that has the newest employee who is a manager, --

A. The ranges could go from ten thousand dollars to a hundred and fifty thousand dollars.

Q. That is the answer. In other words, the minimum would be about ten thousand dollars unsecured.

A., You're asking me for a minimum. There might be no authority in an office.

Q. Is there such an office with no authority?

A. Yes.

Q. What office?

A. I believe we have one. Our Boston Office.

Q. Boston, New York?

A. Yes, sir. I believe that office must go through his Zone Supervisor or the Loans Committee.

Q. That is the only office?

A. I wouldn't know.

Q. Is there any office within the City limits of Buffalo who has a manager who does not have authority to grant a loan?

A. Not that I know of.

Q. Now, in the course of your examination you indicated that on January 13th 1971 you met with Mr. Spitzmiller and Mr.

Robinson and his attorney Ira Pressman?

A. Yes.

Q. Who arranged that meeting?

A. I believe Mr. Spitzmiller.

Q. And when did he call you pertaining to that meeting?

A. I believe we had an earlier meeting set up. I can't recall the date which Mr. Robinson could not show at, and it was a week before, and a week later we sat in our office and met.

Q. There was no meetings before that time, is that correct?

A. I don't believe so, sir.

Q. Where did you get that little card with all those names on it?

A. From Mr. Spitzmiller.

Q. Is that his handwriting?

A. I believe the pencil markings are his handwriting.

Q. You don't know where he got this information, do you?

A. I believe he told mehe got it from Mr. Robinson.

Q. But you were not there when he got it?

A. No, I was not.

Q. In other words, whatever you are saying to me is what Mr. Spitzmiller told you, is that right

A. That's right.

Q. You testified that the ballpoint ink is your writing?
A. If it's ballpoint; the ink writing is my writing.
Q. The bluish ink?
A. That's right.
Q. How about the blackish ink at the top, whose handwriting is that?
A. I'm sorry. I can't identify that.
Q. The black you can't but you know this is m Mr. Spitzmiller's the pencil?
A. I didn't say that.
Q. You believe it is Mr. Spitzmiller's?
A. I believe it is.
Q. Whose is that? (indicating)
A. I don't know, sir.
MR. GARDNER: Your Honor, the record is confused as to what this and that is.
REFEREE McGUIRE: I believe Mr. Sheldon is referring to some black ink at the top, blackish.
BY MR. SHELDON:
Q. For the record, Exhibit 2 I believe for identification has two types of ink, and one type of pencil, sir?
A. Yes.
Q. At the top it says "Jack Robinson receiveables" in a

certain kind of ink. That is the end of that. Then this, nine accounts receiveable in pencil, the figures in pencil, and then it lists again four names in ink. Mr. Sheldon, when did you first see that?

A. I believe this -- I believe that I first saw that approximately a week before our meeting with Mr. Robinson when were to meet with Mr. Robinson and Mr. Spitzmiller had this list of accounts receiveable.

Q. And you say that was a week before approximately?

A. Yes, sir.

Q. Where was that meeting held?

A. At my office, sir, 15 East Genesee Street.

Q. And was Mr. Robinson supposed to attend that meeting?

A. I'm sorry. Are you referring to the meeting that we did have?

Q. No. I am referring to the meeting that you got that card from Mr. Spitzmiller?

A. No, that was not at my office. That was at our Delaware Office.

Q. That was the meeting the week before?

A. Yes.

Q. And was Mr. Robinson supposed to attend that meeting?

A. Yes.

Q. Did he call that he could not come or something?
A. Yes, sir.
Q. Now, when you finally met with Mr. Spitzmiller and Mr. Robinson and Mr. Ira Pressman on January 13th supposedly in the morning, you indicated that you asked Mr. Robinson to bring counsel. When did you tell him that?
A. I didn't say that, sir. I said, if my memory serves me right, I believe it was at our suggestion, either Mr. Spitzmiller's or my suggestion that he have counsel with him.
Q. Whose suggestion was it?
A. I don't really know whether it was my suggestion or Mr. Spitzmiller's suggestion.
Q. Had you ever talked to Mr. Robinson prior to the January 13th meeting?
A. No, sir.
Q. It could not have been your suggestion, could it?
A. It could have been my suggestion to Mr. Spitzmiller.
Q. But not to Mr. Robinson?
A. I don't believe so, sir.
Q. What was your purpose of having him bring counsel?
A. It was my opinion that we were having problems with this loan. And when I sit down with a customer to review the

situation my experience tells me it's always good that he should have counsel with him.

Q. And what kind of problems were you having?

A. We were having problems that our loan was not being paid. I could see no substantial principal reduction on the loan. Mr. Spitzmiller had related to me that he was concerned about the situation and wanted some guidance in counseling.

Q. Was that an installment loan?

A. Pardon, sir?

Q. Was that an installment loan?

A. No, it is not.

Q. What kind of loan was it?

A. This was a demand loan.

Q. There was no set specific payment, was there?

A. The terms of the demand loan always apply. Although we do expect to get principal reduction to get the loan paid off.

Q. What period of time do you expect to get the principal deduction?

A. Arrangements are made.

Q. Are you familiar with what the arrangements were?

A. I'm not sure of what type arrangements there were.

Q. Was Mr. Robinson current on his interest payments?

A. I can't answer that.

Q. In other words, you only know the answers to some of the questions but not others?

MR. GARDNER: I object.

REFEREE McGUIRE: Sustained.

BY MR. SHELDON:

Q. So you don't know whether he was in default on the note at all?

A. At this point I don't, sir, I can't remember.

Q. I ask you again, Mr. Sheldon, if you don't know whether he was in default why was the meeting called?

A. Mr. Spitzmiller expressed concern to me and he requested that I sit down with the customer in guidance and give my help. Whether he was specifically past due in interest at this point I don't know. Our records would sure show it.

Q. Now, in referring to testimony that you gave in response to Mr. Gardner's question indicated this, you had certain security interest in a certain amount, there was a certain number of dollars in accounts receiveable, is that correct?

A. That's right.

Q. How many dollars in accounts receiveable did you have here?

A. In reviewing this list which is a document in evidence

the accounts receiveable totaled approximately fifty-one thousand six hundred dollars.

Q. You don't have any security agreements in January of 1971, do you?

A. Pardon?

Q. You don't have any security agreement in January of 1971, do you?

A. We have a security agreement , yes.

Q. Executed in January 1971?

A. I believe there was on executed in December of 1969.

Q. Was that January of 1971?

A. But it's in effect.

Q. I understand.

A. In January 1971 it's in effect.

Q. And what dollar amount did you have?

A. The security agreements read any and all accounts here and now existing or hereafter created. So we were trying to determine what there was.

Q. The accounts receiveables were subject to change?

A. Yes, sir.

Q. And some days you possibly could have had no interest in any accounts receiveables because there were none?

A. Repeat that.

Q. There are some days that accounts receiveable are subject to change?

A. That's right.

Q. And there are some days you would not have any security interest in any amount, isn't that right?

A. If the man is in business I don't know if that would happen.

Q. Well, the accounts receiveable may be all paid within ten days, and the last twenty days there would be no accounts receiveable?

A. I doubt if he's in business that he would have zero accounts receiveable.

MR. GARDNER: Your Honor, this is really argument. The record speaks for itself, and the witness does not know on any given day whether there are any accounts receiveable or not. I object.

REFEREE McGUIRE: Sustained.

BY MR. SHELDON:

Q. When did you check the accounts receiveable, Mr. Sheldon, or have the bank officer check, what days were that, what dates?

A. Sir, when you say check, what are you referring to?

Q. Well, you testified on direct examination that from that card you had officers check those accounts receiveable or you did some yourself?

A. You're referring to my statement where I said we attempted to verify the accounts?

Q. That is correct.

A. At the meeting with Mr. Spitzmiller and myself prior to the meeting with Mr. Robinson and his attorney, when Mr. Robinson did not show up Mr. Spitzmiller and I sat down and discussed the loan and I believe made two or three calls at that time. I don't remember whether we made the calls directly to the company or we asked either one of these officers of the bank to make the calls for us to attempt to verify the receiveable accounts.

Q. This was prior to the meeting of January 13th, is that correct?

A. Yes.

Q. So on January 13th you knew there was no accounts receiveabl or at least on the ones you checked, is that right?

A. I didn't really know that.

Q. You checked them?

A. I checked them. In our conversations we had reason to believe we had a problem. What the problem was I don't know.

Q. When you verified the accounts receiveable that was allegedly given to you by Mr. Spitzmiller in his handwriting and you found it did not exist?

A. I didn't say it didn't exist. We found descrepancies in our checking.

Q. You found descrepancies?

A. Yes.

Q. Did you find that a different amount --

A. I don't believe we found any of them that we could verify.

Q. By your statement you could not verify means when you made the call you were told the accounts receiveable did not exist, is that correct?

A. I don't remember whether that was the statement made by the person we talked to.

Q. Is that a fair conclusion?

A. I didn't know at that time.

Q. Well, if you call me on the phone, Mr. Sheldon, and say, "Mr. Malecki, do you owe Mr. Robinson forty-nine hundred dollars?", or some hypothetical figure, and he says no, is there any doubt that he owes it or not?

A. Yes, sir.

MR. GARDNER: Objection. It assumes facts not in evidence, and it is argumentative.

REFEREE McGUIRE: Sustained.

BY MR. SHELDON:

Q. As a matter of fact, you knew that specific accounts did not exist on January 13th, isn't that right, Mr. Sheldon?

A. I'm sorry, sir, but all I can tell you is that I knew there was a descrepancy.

Q. What do you mean by descrepancy?

A. The person we talked to has said he could not verify that amount. Now, whether he could verify any or at all I don't even know. But there was a descrepancy.

Q. And you did not make any note as to what he said, is that correct?

A. That's right.

Q. Mr. Gardner asked you on direct examination whether you were concerned, expressed any concern at your meeting on January 13th, and you said you did not. He then gave you Exhibits 3A and 3B for identification, and at the end you said you still feel you did not. What was contained in Exhibits 3A and 3B that made Mr. Gardner believe that maybe you would change your answer?

MR. GARDNER: Objection. Let the record show I am handing Exhibits 3A and 3B to counsel and he can conclude why there

was that answer.

MR. SHELDON: I would like to read it.

REFEREE McGUIRE: We will take a five minute recess.

(Whereupon, a recess was then taken at 11:45 a.m.)

PROCEEDINGS: After recess, 11:50 a.m.

APPEARANCES: Same as before noted.

REFEREE McGUIRE: All right. Proceed.

G E O R G E W. S H E L D O N, having been previously duly called and sworn as a witness on behalf of the Petitioner, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. SHELDON (RESUMED):

Q. Mr. Sheldon, Mr. Gardner on direct examination showed you Petitioner Exhibit 3A and 3B which were represented to be credit memos or memos of officers that appear in the record of the bank pertaining to this loan, is that correct?

A. Yes, sir.

Q. I show you Exhibit 3A which appears to be the first of two pages Mr. Gardner showed you, and I ask you to read the statement starting at "He advised me"?

A. "He advised me that the following list represented the business and the amount owed to him on January 11th 1970."

Q. 1970?

A. Yes.

Q. And when you listed the accounts receiveable there, that indicated what?

A. Niagara Frontier Services fifty-two hundred dollars, Buffalo Butter and Egg thirty-five hundred dollars, Park Edge twenty-eight hundred dollars, Malecki Sausage forty-nine hundred dollars, Twin Fair forty-five hundred dollars, Loblaws sixty-six hundred dollars, Pasco Meat ninety-five hundred dollars, Wardynski eleven thousand dollars, and Tripi thirty-six hundred dollars.

Q. And that was in January 11th 1970?

A. The memorandum, yes. 1971.

Q. What does it say on the memorandum?

A. The memorandum is dated January 13, 1971, and it states that "He advised me that the following list represented the business and the amount owed to him on January 11, 1970".

Q. So there are possibilities that there could be some mistakes in those reports, isn't that right?

A. Not necessarily. It's possible that they are the receivables as of January 11th 1970, and this memo is dated January 13th 1971.

Q. A year later?

A. That's right, sir.

Q. So, in other words, you asked him in 1971 what his receivables were in 1970, is that right, a year before, is that what you are trying to say?

MR. GARDNER: No, no.

THE WITNESS: No.

MR. GARDNER: He is not saying that at all. I object, your Honor.

REFEREE McGUIRE: Overruled.

BY MR. SHELDON:

Q. The year that it says here that these accounts were given, what year, as of what date?

A. It states here, "He advised me that the following list represented the business and the amount owed to him on January 11, 1971".

Q. No, it does not say that.

A. I'm sorry. Correction. "January 11, 1970".

Q. And this is the list from 1971, is that correct?

A. That was a list.

Q. A year later, is that right?

A. That was a list made up at the time we visited with Mr. Spitzmiller prior to our meeting with Mr. Robinson, whatever date that was.

Q. And are those the same creditors - I'm sorry - the same debtors of Mr. Robinson?

A. Yes, sir.

Q. The same amount?

A. Yes, sir.
Q. And it is a year later?
A. Yes, sir.
Q. I show you, Mr. Sheldon, Exhibit 3B which is the second page, and ask you to read what this statement says about what you advised Mr. Robinson, in the middle of that page?
A. The memorandum reads Mr. Robinson showed reluctance --
Q., Excuse me. Where it says, "Mr. Sheldon then advised".
A. "Mr. Sheldon then advised Mr. Robinson that we had done some 'checking' and had found we could not confirm any of the receiveables. He then asked Mr. Robinson if he had a loan outstanding to a credit union.".
Q. That is all. I ask you, Mr. Sheldon, whether or not you still believe that you did not express any concern as to the accounts receiveable?
A. May I ask the Court Recorder to read back my answer to Mr. Gardner's question?
MR. SHELDON: Your Honor, will you please instruct the witness to answer my question.
THE WITNESS: I believe --
REFEREE McGUIRE: Answer the question, please.
THE WITNESS: I believe I said that I did not

remember, but I don't believe I expressed any open concern at that meeting to Mr. Robinson.

BY MR. SHELDON:

Q. Are you saying, Mr. Sheldon, that the facts, the statements in this memorandum are not then accurate?

A. No, I'm not saying they are not accurate.

Q. How about the statement that you just read about your advising Mr. Robinson that you had done some checking and that you could not confirm them?

A. That's right. And we could not confirm them at that time, and we knew there were descrepancies, but I did not say to him that I was suspicious of anything.

Q. Mr. Gardner's question was had you expressed any concern about it.

A. Because I stated to him that we could not confirm the receiveables does not mean that I expressed a concern.

Q. It starts here --

REFEREE McGUIRE: Well, let's see if I can go through this.

Do you think you may have talked directly with Mr. Robinson about the fact that you could not confirm the

receiveables?

THE WITNESS: Yes, sir. A statement --

REFEREE McGUIRE: And you are saying that you did not express doubt about them but you merely stated to Mr. Robinson that you had checked the accounts and were unable to verify them, is that your testimony?

THE WITNESS: That's right. Yes.

BY MR. SHELDON:

Q. Mr. Sheldon, I show you Petitioner Exhibit 6A that you testified was a copy of a Security Agreement for inventory, and so on, executed on December 12th 1969. Did you ever see that document before Mr. Gardner showed it to you this morning?

A. This particular document?

Q. Yes.

A. I may have in reviewing the papers.

Q. Prior to coming to testify?

A. Yes.

Q. It does not state any particular dollar amount of accounts receiveable, does it?

A. No, sir.

Q. I show you Petitioner Exhibit 6D which is an Inventory and Accounts Receiveable Security Agreement, and ask you whether that particular instrument dated January 16, 1969 indicates any particular dollar amount?

A. No, sir.

MR. SHELDON: No further questions, your Honor.

REFEREE McGUIRE: Mr. Gardner.

REDIRECT EXAMINATION BY MR. GARDNER:

Q. Mr. Sheldon, you have been with the bank fifteen years, right?

A. Yes, sir.

Q. And referring just as an example to Exhibit 3A and Exhibit 3B, have you had occasion during that period to see similar records such as that?

A. Yes.

Q. On different occasions?

A. Yes, sir.

Q. Has it ever come to your attention in the course of your experience that there have been typographical errors in bank records?

A. Yes, sir.

Q. Have you ever seen typographical errors in records similar to Exhibit 3A and Exhibit 3B?

A. Would you repeat that question, please.

Q. In similar type records that you have observed over the last fifteen years, records similar to Exhibit 3A and Exhibit 3B, have you ever observed typographical errors in such records?

A. Yes, sir.

Q. Is it possible, by your experience with the bank that the reference in Exhibit 3A on January 11th 1970 was in fact a typographical error by a secretary who had been accustomed to typing the previous year's date?

A. Yes, sir.

Q. Now, it is your recollection that you became Zone Supervisor in January 1970 I believe you said, is that right?

A. Yes, sir.

Q. How long had you known prior to that time that you would be tapped as Zone Supervisor?

A. For that zone?

Q. Yes.

A. Approximately three months.

Q. And the office of the Zone Supervisor that you now occupy is in the same building as the Midtown Office, is it not?

A. Yes, sir.

Q. And during that entire three month period isn't it a fact

that you were employed on the main floor of that building?

A. Yes, sir.

Q. And how far away is the zone office from where you were employed at that time?

A. Unfortunately three flights of stairs up.

Q. But it is directly overhead, is that right?

A. Yes, sir.

Q. And in the course of your regular employment with the bank did you have frequent occasion to see and converse either on business or social occasions with the then Zone Supervisor?

A. Yes, sir.

Q. Prior to your taking office as Zone Supervisor did you have occasion to consult with your predecessor as to matters involving his office?

A. Yes, sir.

Q. And do you recall whether or not in the course of those consultations you had conversations relative to pending business before that Zone Supervisor?

A. Yes, sir.

Q. Did you?

A. Yes.

Q. You did?

A. Yes.

Q. Were there any occasions during this three month period when you would have been discussing with him particular questions or loan applications or matters such as that that he had under advisement at that time?

A. Yes, sir.

Q. And was there any particular reason for your having these conversations with him?

A. Yes, sir.

Q. And what was that?

A. To brief myself and review the zone portfolio and administrative duties, and to learn from him as much as I could about the existing operation.

Q. And this was in anticipation of your taking over his duties on January 1st, is that right?

A. That's right.

Q. Now, you testified that you first saw Exhibit 2 for identification approximately a week in advance of the meeting on January 13th at which time you were meeting with Mr. Spitzmiller on this particular loan, do you recall that?

A. Yes, sir.

Q. I show you Exhibit 3A for identification. Would you begin

reading outloud where I have my finger marked, "Mr. Sheldon came"?

A. "Mr. Sheldon came to the Delaware Office at nine a.m. on January 12 to meet with the Robinsons. At approximately nine thirty Mrs. Robinson called to advise us that Mr. Robinson had some appointments and would be unable to be here and that she also was unable to be here at that time. The writer and Mr. Sheldon discussed the situation at length and attempted to verify the accounts receiveable. The writer contacted Mr. Robinson at approximately two p.m., January 12 and set up an appointment for ten thirty a.m. on January 13, 1971."

Q. Okay. That is enough. Does that record refresh your recollection as to when that meeting with Mr. Spitzmiller in his office occurred?

A. Yes, sir. It was the day prior to our meeting with Mr. Robinson and his counsel.

Q. Is that meeting with Mr. Spitzmiller on the 12th of January the meeting to which you have previously referred in your testimony?

A. Yes, sir.

Q. This record Petitioner Exhibit 3A and 3B, had you seen that record before you came into the courtroom today?

A. No, sir.

Q. And this is a record that Mr. Spitzmiller prepared, is that right?

A. Excuse me. May I correct that answer. I may have read this memorandum at the time or sometime after Mr. Spitzmille prepared it. This is in our files. And in reviewing the records I may have read this memorandum.

Q. Have you read the memorandum recently?

A. No, sir.

MR. GARDNER: You may ask.

REFEREE McGUIRE: Mr. Sheldon.

RECROSS EXAMINATION BY MR. SHELDON:

Q. Mr. Sheldon, who was the Zone Supervisor before you?

A. Mr. Schifferle.

Q. And his first name, sir?

A. Elmo.

Q. And is he still with the Manufacturers and Traders Trust Company?

A. Yes, he is.

Q. And in what capacity?

A. Mr. Schifferle is assigned to the Administration and Systems and Operations.

Q. And does he hold an office, a title?

A. I believe Mr. Schifferle is a Vice President.
Q. Where would his office be located?
A. I believe his office is at the One M & T Plaza office.
Q. One M & T Plaza?
A. Yes, sir.
Q. Now, when Mr. Gardner refreshed your recollection as to dates you indicate now that it was the day before the meeting of the 13th, is that correct?
A. Yes, sir.
Q. You also indicate that in reading the memorandum there was a reference to Mrs. Robinson, Mr. Robinson's wife, is that correct?
A. Yes.
Q. Why did you want her?
A. I didn't say I wanted her.
Q. Why was she supposed to come to the meeting?
A. Apparently she was asked to attend the meeting on the 12th.
Q. Was she a signatory on this loan, so far as you know?
A. I'm not sure, Mr. Sheldon.
Q. Is it possible, Mr. Sheldon, that Mr. Robinson did not answer any questions that you put to him on January 13th 1971?
A. Is it possible?

Q. Yes.

MR. GARDNER: Your Honor, I object to this. I think this is speculative, argumentative.

REFEREE McGUIRE: Well, I will sustain the objection to the form of the question.

MR. SHELDON: I will rephrase the question, your Honor.

BY MR. SHELDON:

Q. How much time did you spend with Mr. Robinson and Mr. Pressman on January 13th 1971?

A. I don't recall exactly, but probably an hour, hour and a half.

Q. And in the course of that conversation did you ask Mr. Robinson some questions?

A. Yes, sir.

Q. Did he ever refuse to answer any questions?

A. (No response.)

Q. On the advice of counsel?

A. I don't recall whether he actually refused to answer any questions.

Q. Well, did he ever not answer any questions that you asked?

A. I don't recall that he refused to answer or not answer any questions.

Q. Did he complete a financial statement at that time?
A. No, sir.
Q. Did his counsel advise him to take it with him?
A. I believe the circumstances were we - I asked Mr. Robinson to fill out a financial - a current financial statement to get the current status of his position, and he stated that he could not do it at that time, he didn't have all of the facts and all of the figures, and stated that he would take a form with him and send it to us.
Q. As a matter of fact, Mr. Sheldon, didn't Mr. Robinson on the advice of counsel refuse to answer a number of questions that you asked?
A. I don't remember that upon advice of counsel he refused to answer any.
Q. You don't remember, but he could have, is that correct?
MR. GARDNER: I object. The witness has testified as to his recollection.
REFEREE McGUIRE: Sustained.
BY MR. SHELDON:
Q. Is your recollection of the facts of that meeting as good as your recollection of dates and time, Mr. Sheldon?
MR. GARDNER: Objection. I object to the form of the question. I don't understand it

REFEREE McGUIRE: Sustained.

MR. SHELDON: I have no further questions.

MR. GARDNER: I have no questions, your Honor.

REFEREE McGUIRE: All right.

Mr. Sheldon, that is all. Thank you.

THE WITNESS: Thank you, sir.

REFEREE McGUIRE: Gentlemen, we will then recess until two o'clock.

(Whereupon, a luncheon recess was then taken at 12:20 p.m.)

PROCEEDINGS: After recess, 2:00 p.m.

APPEARANCES: Same as before noted.

REFEREE McGUIRE: All right, gentlemen, proceed.

MR. GARDNER: Your Honor, I call Robert Spitzmiller to the stand.

R O B E R T F. S P I T Z M I L L E R, J R. (Liberia Road, Marilla, New York), having been first duly called and sworn as a witness on behalf of the Petitioner, testified as follows:

REFEREE McGUIRE: You may ask, Mr. Gardner.

MR. GARDNER: Before examining this witness, I think we wanted to clarify a couple of things on the record.

First of all, Donald Sheldon the attorney for the Bankrupt is no relation to the witness George Sheldon, the witness this morning. The record may contain references to Mr. Sheldon from time to time, and I trust the context will make it clear who was being addressed.

REFEREE McGUIRE: Who is addressing whom.

MR. GARDNER: That is right.

And, secondly, there was reference to the attorney for the bankrupt in the course of the testimony in connection with the events on January 13th 1971. For the record, that attorney was not Mr. Sheldon, but was Mr. Ira Pressman.

Is there anything else?

MR. SHELDON: No. Thank you.

DIRECT EXAMINATION BY MR. GARDNER:

Q. Now, what is your employment, Mr. Spitzmiller?

A. I'm an Assistant Vice President of the Manufacturers and Traders Trust Company.

Q. Where were you assigned and what were your duties in January of 1971?

A. I was Manager of the Delaware-Chippewa Office of the M & T Bank.

Q. And where had you been assigned prior to that - correction. How long had you been Manager of that office?

A. Since July 1st of that year.

Q. You mean since July 1st 1969?

A. Yes, sir.

Q. And you are now working elsewhere, are you?

A. Yes, I am.

Q. And where is that?

A. I'm working at the Midtown Office.

Q. And what is your position there?

A. Right now I'm the Assistant to Mr. Oddy, and upon his retirement I'm going to be the Manager of that office.

Q. When were you reassigned to the Midtown office?

A. October the 5th of this year, 1971.

Q. Now, did you have occasion to interest yourself in the Jack Robinson loan in January 1971?

A. Yes, sir.

Q. I show you Exhibit 2 for identification, and ask you what that is, if you know?

A. Yes, sir. This is a list written in my handwriting of receiveables owed to Mr. Robinson.

Q. And you say it was in your handwriting . Was all of that in your handwriting? First of all, how about the pencil portion?

A. The pencil portion is in my handwriting.

Q. Is there any ink portion at the top, "Jack Robinson Receiveables", is that your handwriting?

A. Yes, sir.

Q. There is another set of ink entries which Mr. Sheldon identified as being his handwriting, is that right?

A. I believe that is his writing.

Q. When was this card prepared, to the best of your recollection, if you recall?

A. It was prepared in January of 1971: I don't remember the exact date. Itwas prior to either of the two meetings which Mr. Sheldon mentioned today. It was a meeting which I had with Mr. Robinson at which time I asked him to please relate to me the receiveables which he had outstanding or receiveables which were monies due to him at that time.

Q. And did Mr. Robinson give you the information that you put on that card?

A. I asked him , I said, "Now, Mr. Robinson, who owes you money?", and he would say, in this case, "Niagara Frontier Services", which I wrote down, and I'd say, "Now, how much do they owe to you?", and he'd say, "Fifty-two hundred dollars.".

Q. Did he specify whether this money was owed to him personally or was it owed to him in the capacity as an agent for some corporation?

A. He stated it was owed to him personally.

Q. Now, I show you Exhibits 3A for identification and 3B for

identification, and ask you if you can identify those sheets?

A. Yes, sir. This is a memorandum which I wrote to the file.

Q. Can you tell us when you prepared that for the file?

A. Yes, sir. I did it on January the 13th 1971.

Q. And the memorandum relates to the Jack Robinson loan, is that correct?

A. Yes, sir.

Q. Now, referring yourself, without reading the exact details, to the beginning of the memorandum, does that refresh your recollection as to when the conversation with Mr. Robinson occurred at which you prepared Exhibit 2?

A. Yes, sir.

Q. And when did that conversation occur?

A. January 11th 1970 - 1971. Excuse me.

Q. Now, I notice on Exhibit 3A that the date is given as January 11, 1970. Can you explain that?

A. It's a typographical error. It's intended to be January 11th 1971.

Q. You do recall that the information related in the memo and referred to on Exhibit 2 was obtained in January of 1971?

A. Yes, sir.

Q. Can you state why you were speaking to Mr. Robinson about the loan at that point in time?

A. Yes, sir. Mr. Robinson had a line of credit for one year which had expired in January. The loans were all on demand, but we also had given to him a letter which was a line of credit. In December I had visited with Mr. Robinson relative to - or before December, in November, requesting both current financial statements and repayment on the loan. I also explained to him how the loan was intended to work, that he would borrow, pay down, and his inventory and accounts receiveable would go up; he would borrow, as he received funds the loan would be paid down. We had not received payment, the loan commitment or the line of credit commitment was terminating, and because he had not handled the line of credit the way it was intended I asked him to pay the loan in full.

REFEREE McGUIRE: Off the record.

(Off the record discussion was had.)

REFEREE McGUIRE: Back on the record.

BY MR. GARDNER:

Q. I show you Exhibit 6 for identification, and ask you if that is a letter which you wrote to Mr. Robinson dated December 12, 1969?

A. Yes, sir.
Q. And did that relate to the line of credit that you referred to just now?
A. Yes, sir.
Q. And while we are about it, Mr. Spitzmiller, what is the document attached to the letter?
A. This is a Loan Agreement.
Q. Was this Loan Agreement prepared in December 1970?
A. Yes, sir.
Q. Who prepared it?
A. Pardon. It was December of 1969.
Q. Excuse me. December 1969. Who prepared it?
A. The bank prepared it.
Q. Did you prepare it personally?
A. I don't recall. I know it was reviewed by Mr. Dutton.
Q. In my office?
A. In your office.
Q. This agreement is dated December 12th 1969, is that correct
A. Yes, sir.
Q. And there is attached as 6A a Security Agreement dated December 12, 1969?
A. Yes, sir.
Q. Was that prepared about the same time as the Agreement?

A. Yes.

Q. And attached as Exhibit 6B is a document on Manufacturers and Traders Trust Company letterhead dated December 12, 1969 addressed to Mr. Robinson?

A. Yes, sir.

Q. Was that also prepared at about the same time?

A. Yes.

Q. And how about Exhibit 6C, the same questions - no - correction. On Exhibit 6C there is a Security Agreement (Chattel Mortgage) dated January 16, 1969. Do you know anything about the preparation or execution of that document?

A. No, sir.

Q. Do you know this to be one of the documents held in the ordinary course of business of the Trust Company as part of its portfolio?

A. Yes. It was collateral for an existing loan.

Q. Now, there is also attached Exhibit 6D, again dated January 16th 1969, and I would ask you if that also, to your knowledge, is part of the loan portfolio of the Trust Company purportedly given by Mr. Robinson?

A. Yes, sir.

Q. What is the date of the termination of the line of credit,

if any, set forth in Petitioner's Exhibit 6?

A. The termination of the agreement? It would be December 11th 1970.

Q. And is it your testimony that it is the fact that that period had been concluded without other arrangements being made that led you to have conversations with Mr. Robinson?

A. No. Prior to the time it terminated I asked him to please pay the loan. I never wrote him I don't believe, but I had asked him, and he had been into the office on occasions, and he kept saying that he needed a little additional time.

Q. And the conversation on January 11th 1970 was a further conversation with Mr. Robinson?

A. Yes, sir.

Q. Now, after you got the information which is set forth on Exhibit 2, what did you do with that information, or the exhibit itself, however you wish to put it?

A. Well, I asked Mr. Robinson if it would be agreeable with him that I call some of these to verify them, and he said that in his business - in fact, I had asked him on prior occasions if it would be agreeable with him to contact people that owed money to him, and he preferred that we did not and that it would not be in the normal couse of his business and it would alarm some of the people that

he was owing money and that he was having some problems, and he would rather that we did not. On this date I did not call anyone. I did call Mr. Sheldon and set up a meeting for Mr. Robinson and Mr. Sheldon to be in my office the following day, which would have been I believe January the 12th.

Q. And then on January 12th did Mr. Sheldon come to your office?

A. Yes, sir.

Q. And you heard Mr. Sheldon's testimony this morning regarding his meeting with you?

A. Yes, I did.

Q. In your office?

A. Yes.

Q. Was that testimony correct or would you change any portion of it to conform with your recollection?

A. To the best of my knowledge that was correct.

Q. Now, just so the record is complete. When you talked to Mr. Robinson on January 11th do I understand that you asked him point by point to name a creditor?

A. Yes, sir.

Q. And then to give you the amount owing by that creditor?

A. Yes, I did.

Q. And did he do that with respect to each of the creditors named on Exhibit 2?

A. Yes, sir.

Q. Did you get any of the information on Exhibit 2 from any source other than Mr. Robinson?

A. No, sir. Excuse me. None of the penciled portion.

Q. I'm sorry. Yes. That is correct. That is what I am referring to. Now, did there come a time when you met with Mr. Robinson, Mr. Sheldon, and Mr. Pressman in Mr. Sheldon's office on January 13th?

A. Yes, sir.

Q. And will you state for the record your recollection of what occurred at that meeting?

A. Mr.Robinson came to my office first. I believe the meeting was originally scheduled to be in my office. He came with Mr. Pressman. I called Mr. George Sheldon and asked if he was coming over, and he asked would it be agreeable if we came over there. This was agreeable. And myself and Mr. Pressman, and Mr. Robinson went over to Mr. Sheldon's office. He met us there. Do you want me to continue on?

Q. Yes. What happened at the meeting?

A. At the meeting Mr. Sheldon asked Mr. Robinson about the loan. There were preliminary conversations, and so forth,

about the loan.

MR. SHELDON: I am going to object to the term "preliminary conversations". Preliminary to what?

REFEREE McGUIRE: Sustained.

BY MR. GARDNER:

Q. State in detail, Mr. Spitzmiller, what conversation occurred that you can recall?

A. Mr. Sheldon reviewed the fact that a line of credit had had been established, and that there had been no repayment on the loan for one year, that we were past the December the 11th, that the line of credit had expired, the note was a demand note, that Mr. Spitzmiller had asked for payment, we had none. Mr. Spitzmiller had asked for financial statements, current financial statements, we had not had those. Mr. Spitzmiller had asked him if he had accounts receiveable, and Mr. Robinson said yes, that he had.

Q. Is this conversation that Mr. Sheldon was relating at that meeting?

A. Mr. Sheldon.

MR. SHELDON: I am going to object to what conversation that Mr. Robinson talked to Mr. Sheldon about. He can't testify

to that.

MR. GARDNER: He was at the meeting, your Honor. If counsel would --

REFEREE McGUIRE: This was in Mr. Sheldon's office?

THE WITNESS: Mr. Sheldon's office.

MR. GARDNER: Mr. Spitzmiller was there.

MR. SHELDON: Mr. Sheldon was on the stand and testified to that. Mr. Spitzmiller's testimony of what Mr. Sheldon said to Mr. Robinson or what Mr. Robinson said to Mr. Sheldon is hearsay.

REFEREE McGUIRE: Was the bankrupt present?

THE WITNESS: Yes.

REFEREE McGUIRE: Overruled.

MR. SHELDON: Exception.

BY MR. GARDNER:

Q. Continue with the conversation which occurred in your presence in Mr. Sheldon's office when the bankrupt was present?

A. He asked Mr. Robinson --

MR. SHELDON: Who is "he"?

THE WITNESS: Mr. George Sheldon. He asked Mr. Robinson whether or not Mr. Robinsor

still had accounts receiveable that were due personally to him.

BY MR. GARDNER:

Q. What did Mr. Robinson say?

A. Mr. Robinson said yes, he did. Mr. Sheldon then asked me if I had the list which I had shown him before, and I said yes, I did. And I gave him this list.

MR: GARDNER: Let the record show the witness is referring to Exhibit 2.

BY MR. GARDNER:

Q. Go ahead.

A. Mr. Sheldon then proceeded to ask Mr.Robinson were these accounts that were owed to him, Mr. Robinson, and Mr. Robinson said yes. Mr. Sheldon asked him if he had any other indebtedness or accounts that were owed to him, and Mr. Robinson said, "I don't believe so.". Mr. Sheldon then asked Mr.Robinson if he would prepare a financial statement, a current financial statement. He sent me out, and I got the forms, and I came back in, and he handed them to Mr. Robinson to fill them out. And Mr. Robinson said that he would try to but he did not have information at that meeting which would permit him to correctly fill out the financial statement but that he would take it along

and submit it to us later. After that Mr. Sheldon then started asking more direct questions about this list of accounts receiveable (indicating), and asked Mr. Robinson if it would be all right that he call Niagara Frontier Services and see if he could do something to free up the money so that they money would be paid to Mr. Robinson. Mr. Robinson again stated that he would prefer Mr. Sheldon not call Niagara Frontier Services because he was afraid that in his business that this would not be good for him, and that he would rather not have the Manufacturers and Traders Trust Company calling one of the people that he was doing business with relative to an account which was owed to him. Mr. Sheldon then proceeded down and asked - down the list and asked on some of these others, and continued to have the same answers. Mr. Sheldon also asked him whether he owed any money to anyone else, and Mr. Robinson said just the M & T Bank. And I believe it was at that point Mr. Pressman suggested that Mr. Robinson stop answering the questions - or reminded him that he did have a mortgage on his house, and Mr. Robinson said yes, and I believe it was about at that point that Mr. Pressman requested an opportunity to take his client Mr. Robinson to his office in order to visit with him about

the entire situation. And that was the end of the meeting.

Q. Was there any discussion in the course of the meeting, do you recall, in which Mr. Sheldon inquired whether the accounts receiveable were owing to Mr. Robinson personally or owed to American --

A. New York Commodities.

Q. --New York Commodites?

A. Definitely. Mr. Sheldon more than one occasion asked Mr. Robinson, "Who are these funds due to, you or New York Commodities, or to whom?". There was no question in Mr. Robinson's mind that they were due to --

Q. Just a minute. Just a minute. State for the record, if you will, what Mr. Robinson said in response to that?

A. They were due to him personally.

Q. Now, Mr. Spitzmiller, directing your attention to the Petitioner Exhibit 6 and the events in December of 1969, would you state to the Court what occurred by way of any application from Mr. Robinson or any conversation between you and Mr. Robinson that led to the transaction indicated in Petitioner Exhibit 6 and the execution of the promisory note marked Petitioner Exhibit 4?

A. In late November 1969 Mr. Robinson came to my office to request either an additional loan or a type of revolving

credit. He told me that we were getting into the December months and it was at a time when he would need to carry additional inventory for the holiday season. I asked him about the amount of the additional money he would need. And if my memory serves me correctly, it was between fifteen and twenty thousand dollars additional funds. I asked him about his current financial statement which we had in our file, And I agreed to visit with my supervisor who at that time was Mr. Elmo Schifferle about his request. About December the 8th, 9th, in that area, Mr. Robinson called and asked if I had been successful with the Zone Supervisor in increasing our credit to him, and I advised him yes, that we were prepared to extend credit to him as high as thirty-five thousand dollars. On or about December the 10th Mr. Robinson came into the office and advised me that he had an opportunity to make a very advantageous purchase, and I told him that the papers had not yet been prepared. After visiting with Mr. Robinson I agreed to loan to him for a period of two or three days I believe the amount is seventeen thousand dollars. It was intended at that time that as soon as the papers were prepared that Mr. Robinson would come in and we would begin working under a line of credit, and

that from that point on he would sign any additional papers that we needed. On December - it must have been the 11th I called Mr. Robinson and advised him that the papers were ready and would he please stop in the office. Mr. Robinson did come in on December 12th, and we did replace the note of December the 10th with a new note dated December 12th.

Q. Yes. Let me interrupt there.

A. Yes, sir.

Q. The new note of December the 12th, is that Petitioner Exhibit 1 - Exhibit 4?

A. Yes, sir.

Q. What happened to the note of December the 10th?

A. That was stamped replaced, renewed, and given back to Mr. Robinson.

Q. Do you know of certainty what the word on the stamp was, could it have been "Paid"?

A. Absolutely not. It had to be either "Renewed" or "Replaced"

MR. GARDNER: Now, would you mark this as Petitioner Exhibit 10A.

(Whereupon, a Card purporting to be a Manufacturers and Traders Trust

Company printed form card was then marked Petitioner Exhibit 10A for identification.)

(Whereupon, a Card purporting to be a Manufacturers and Traders Trust Company printed form card was then marked Petitioner Exhibit 10B for identification.)

THE WITNESS: Mr. Gardner, I don't personally remember what the note was stamped. It was supposed to have been stamped either "Renewed" or "Replaced".

BY MR. GARDNER:

Q. I show you Exhibits 10A and 10B which appear to be two printed form cards with columns on it, and ink entries of figures, and in at least one instance some typewritten figures, and material. What type of record is indicated by those two exhibits?

A. These are ledger cards.

Q. Are they maintained by the Manufacturers and Traders Trust Company?

A. Yes, sir.

Q. As part of the ordinary business records covering outstanding loans?

A. Yes, sir.

Q. Do these cards relate specifically to loans of Jack Robinson?

A. Yes, sir.

Q. Now, directing your attention to Exhibit 10B, does that have any reference to the note and loan transactions of December 10th 1969 and December 12th 1969 that you have referred to?

A. Yes, sir.

Q. And referring to the transaction where the date 12-10-69 appears, would you explain reading across the card what the entries mean?

A. This was the date of the note, December 10th 1969. The note number was 11311.

Q. Now, stopping right there for a moment. Do you assign numbers to outstanding notes?

A. Yes, sir.

Q. And is this indicated on the note in any way?

A. Yes, sir. This number is the same number as this (indicating).

Q. You are pointing out that on Exhibit 4 for identification

the note number 4910 appears on the note and it also appears on the record in Exhibit 10B, is that right?

A. Yes, sir.

Q. Going back to the prior note then, 11311 would have been the number entered on the note, is that right?

A. Yes, sir.

Q. What does the entry "Accounts Receiveable" mean?

A. That the loan is primarily secured by accounts receiveable.

Q. The next column I see the letter "R", what is that?

A. (No response)

Q. What does that column indicate, if you know?

A. It means a renewal or replacement. A portion of this thirty-five thousand is a renewal or replacement of a prior note. In this case it goes back to a note which was dated November the 17th 1979.

Q. 1969?

A. Excuse me. 1969 for eighteen thousand.

Q. And in the next column where it says "Old Number", is that the number that was on the previous note, is that right?

A. Yes, sir.

Q. The next column is "Rate", "7-1/2", and that is the percentage, is that right?

A. The percentage interest rate.

Q. And what is the next column?
A. This is the due date of the note.
Q. And what does that show for the December 10th note?
A. December 12, 1969.
Q. And the next column?
A. It showed that this note was in the amount of thirty-five thousand dollars, replaced the prior note of eighteen thousand dollars, and provided an additional seventeen thousand in credit making the total balance due to the bank of thirty-five thousand dollars.
Q. And the figure seventeen thousand does not actually appear, but you read that from the figures there, is that right?
A. Yes, sir.
Q. The next line without going --
MR. GARDNER: The Court can examine this.
BY MR. GARDNER:
Q. Without going through complete detail is it correct that this next entry shows the December 12th date of Exhibit 1, shows the note number on Exhibit 1, it shows the same accounts receiveable entry, it again shows Exhibit 1 is a renewal or replacement of a prior note, it shows the prior note number, rate, and under the column "Due" it has

the designation "Dem", what does that mean?

A. Demand.

Q. And the next three columns all have thirty-five thousand dollars in them, is that right?

A. Yes, sir.

Q. And is it a correct statement that the first column indicates a note is put on for thirty-five thousand, the next column indicates a prior note for thirty-five thousand has been satisfied, and the final column marked "Balance" shows an outstanding balance of thirty-five thousand?

A. Yes, sir.

Q. Would you advise the Court in a little bit more specific detail, if you will, what induced you to grant the loan on December 10th when the loan papers themselves had not been completed?

A. Mr. Robinson had told me that he had a very advantageous purchase, that he needed the money if humanly possible that day in order to effect this purchase. I knew that the loan had been approved by the loan supervisor, that it was merely a matter of having our papers prepared. I also was aware of the fact that Mr. Robinson had borrowed from the bank for many, many years, and that he always

handled his affairs as agreed.

Q. So you gave him the money on that day, is that right?

A. Yes, sir.

Q. Now, at anytime in the process of deciding to grant this additional loan in December of 1969 did you have occasion to refer to any credit statements or financial statements executed by Mr. Robinson?

A. Yes, sir.

Q. And will you speak to that, please, and tell us about that?

A. Considering any credit the first thing we do is pull the credit file to examine the financial statements that we already have in the file in order to determine whether or not we do have a current financial statement.

Q. Did you do so in this case?

A. Yes, sir.

Q. And what did you find?

A. I found a statement dated - well, I don't know the exact date. Do you want me to look at this? I could refresh my memory.

Q. Do you want to look at Exhibit 8 for identification and see if that helps you?

MR. SHELDON: What is Exhibit 8, for the record?

MR. GARDNER: It is the former Exhibit 5, Financial Statement as of April 25, 1969 dated May 5, 1969.

THE WITNESS: This is a Financial Statement that was in the file. I believe it was the most current one, although I'm not --

BY MR. GARDNER:

Q. Well, I show you Petitioner Exhibit 7 for identification, that is a financial statement from May of 1970, is that right?

A. Yes, sir.

Q. And Petitioner Exhibit --

A. The first one was dated April --

Q. Oh, I see. Yes. Well, on Petitioner Exhibit 7, that is a Financial Statement as of May of 1970, is that right?

A. Yes, sir.

Q. And you did not have that statement before you at that time, did you?

A. No, sir.

Q. Petitioner Exhibit No. 9 for identification is purportedly a copy of a Financial Statement dated July of 1968, made as of July 12, 1968, and dated July 16, 1968, was this in

the file at the time?

A. Yes, sir.

Q. Now, these two statements are approximately a year apart. Do you have any recollection of any more recent statements than Exhibit 8?

A. No. If my memory serves me correctly I even discussed the point of receiving a more current financial statement in November of 1969 which Mr. Robinson said he would get together for me.

Q. Did you ask Mr. Robinson at anytime whether the information in Petitioner Exhibit 8 was still generally correct?

A. Yes, sir. In fact, I would even ask him specifically, "Do your accounts receiveable now equal about twenty-six thousand, twenty-seven thousand dollars?", and he would say, "Yes.", "Do you have merchandise --

MR. SHELDON: Now, I am going to object to what he would say. What did he say.

REFEREE McGUIRE: Sustained.

MR. GARDNER: You understand the difference, when you say, "he would say" something, that sounds conditionally. You are being asked to say, if you recall, what he did say.

THE WITNESS: I recall he did say he had at least this much in receiveables.

BY MR. GARDNER:

Q. When you say he had at least this much in receiveables you are referring to Petitioner Exhibit 8, and you are referring, are you, to three figures in the aggregate consisting of twelve thousand five hundred dollars, eight thousand dollars, and sixty-seven hundred dollars, is that correct?

A. Yes, sir.

Q. That totals approximately twenty-four thousand dollars, twenty-five thousand dollars, does it?

A. A slightly bit more, yes.

Q. Did you ask him anything about the reference to merchandise on that statement?

A. Yes, sir.

Q. And what did he say in respect to that?

A. I said, "The statement shows that you own twelve thousand five hundred dollars worth of hams. Do you still own that many hams?", he said, "Yes.", I would say, "That's a lot of ham.", he would say, "Yes.".

MR. SHELDON: I am going to object, "he would say" again.

MR. GARDNER: It is a colloquialism.

Mr. Spitzmiller, please do not say what he would say. Please say what he did say. Be very specific in that regard, okay?

THE WITNESS: Yes, sir.

BY MR. GARDNER:

Q. Go ahead, if you will?

A. That was -- I don't recall ever asking him specifically about the figure cash value of life insurance. I did know that he had at least the one automobile still which was a station wagon.

Q. Did you ask him anything about the real property?

A. Yes, I did ask him about the real estate, whether or not he still had the house, he would say - he did say yes, he did. I would ask , "Is it worth approximately this amount of money?", and Mr. Robinson said yes, it was. I don't honestly remember asking him about personal property. I did ask him whether he owed any money to anyone other than the Manufacturers and Traders Trust Company, and he said no, that he did not other than his mortgage which was one of the savings banks, I believe it was the Marine Trust.

Q. And that is referred to on this statement Exhibit 8, is it not?
A. Yes, sir.
Q. Did you ask him about anything else in this statement, that you can recall?
A. I did ask him, say to him that the Financial Statement showed that the twelve months ending in April of 1969 that he had earned about thirty thousand dollars, and had he earned approximately the same amount this year.
Q. And what did he say?
A. I believe he said that he had.
Q. Is there anything else other than this statement that was discussed specifically between you and Mr. Robinson?
A. Not that I recall.
Q. It is your testimony that this statement was taken out of your credit file and discussed with Mr. Robinson present, you were looking at it in his presence, is that right?
A. No, sir. It remained in the file. I was reading from it and asked him questions.
Q. You had the file open in front of him, is that right?
A. No, sir. I had the file in here. He was on the other side of the desk (indicating).
Q. So the record is clear, what you are indicating is that

you had the file in a position next to your body where you could read it and you were looking at the credit statement and asking him questions about his financial affairs, is that right?

A. Yes, sir.

Q. Now, during the time when you were in charge of the Delaware Office of the Trust Company you had occasion to review and have custody of the loan files in connection with the Robinson loans, is that correct?

A. Yes, sir.

Q. And is this correct, as I believe you testified, that from time to time you had discussions with Mr. Robinson regarding his outstanding loan transactions?

A. Yes, sir.

Q. And did you have occasions during this period to review the contents of the file regarding any financial statements or collateral documents or notes held by the customer?

A. Yes, sir.

Q. Now, I show you Petitioner Exhibit 8 for identification which you have referred to in your testimony. Is that a document which was maintained in the regular course of the business of the Manufacturers and Traders Trust Company as part of the Jack Robinson loan contracts?

A. Yes, sir.

Q. And you are familiar with the practices of the Trust Company in obtaining financial statements, are you?

A. Yes, sir.

Q. How long have you been with the bank, by the way, Mr. Spitzmiller?

A. Since July 1959.

Q. And during that period have you had frequent occasion to refer to Financial Statements in connection with applications for loan?

A. Yes, sir.

Q. And is it the regular practice and business practice of the Trust Company to request financial statements from those who are applying for loans?

A. Yes, sir.

Q. I refer you to Exhibit 7 for identification, and this is a statement which was obtained by the Trust Company, I gather, at a time when you were at the Delaware Office, is it not, May 1970?

A. Yes, sir.

Q. And without repeating the same questions, is this also a financial statement obtained and kept in the ordinary course of the business of the Manufacturers and Traders Trust Company and specifically in connection with the

continuing supervision of outstanding loans on the books of the Company?

A. Yes, sir.

Q. It is the practice of the Trust Company, is it not, where there are large loans outstanding to request updated financial statements from time to time?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And is Exhibit 7 such an updated financial statement?

A. Yes, sir.

Q. Now, referring to Exhibit 9 for identification, you have testified that that statement dated July 12, 1968 was in the files of the Trust Company, have you?

A. (No response)

Q. Let me rephrase the question. Was this statement marked Petitioner Exhibit 9 kept in the files of the Trust Company as part of the credit record on the Robinson loans?

A. Yes, sir.

Q. And is this exhibit a business record kept by the Trust Company in the ordinary course of business?

A. Yes, sir.

Q. I show you Petitioner Exhibit No. 5 for identification, and ask you if you can identify that?

A. It is one of the notes we had in connection with Mr. Robinson. It was a note I believe that went on before I became --

Q. This is a note dated January 1969, is that correct?

A. Yes, sir.

Q. And it went on the books before you arrived at the Delaware Office, did it not?

A. Yes, sir.

Q. Was it on the books at the time you arrived at the Delaware Office?

A. Yes, sir.

Q. And were you familiar with this note as part of the outstanding loan obligation of Mr. Robinson?

A. Yes, sir.

Q. Can you tell us what the balance owing on the note marked Exhibit 2 for identification is?

A. One hundred and fifty dollars -- One hundred thirty-seven dollars and fifty cents.

Q. In that connection, by the way, referring to Exhibit 4, what is the balance owing on that note?

A. Thirty-five thousand dollars.

Q. And that is the principal balance without interest, is that right?
A. (No response)
Q. Would there be interest on top of the thirty-five thousand dollars?
A. No, sir. Would there be interest in addition to this?
Q. Yes.
A., Yes, there would be.
Q. And are you in a position to state when that interest is due from by examining the exhibit?
A. The outstanding interest?
Q. No, no. The date from which interest remains owing?
A. No, sir. Not from this.
Q. What record would you refer to for that?
A. The interest payment record which is maintained in connection with our loans.
Q. Now, referring to Exhibit 10A for identification --
MR. GARDNER: Off the record.
(Off the record discussion was had.)
BY MR. GARDNER:
Q. Now, referring to Exhibit 10A for identification, does that record reveal with respect to the loan transactions referred

on it the balances, the principal balances owing from time to time during the period covered by the card?

A. (No response)

Q. Let me ask you the question another way, if I may, Mr. Spitzmiller. Exhibit 10A is filled with entries on both sides of the card. The earliest entry is dated July 18, 1967, is that right?

A. Yes, sir.

Q. And that in the same fashion you have previously indicated with regard to Exhibit 10B lists information on a particular note dated on that day, is that right?

A. Yes, sir.

Q. And in the far right column does it show a balance outstanding?

A. Yes, sir.

Q. What does that balance represent?

A. This is the balance of any and all notes outstanding covered by this ledger card.

Q. And is that the principal balance or does it include interest, if you know?

A. On this card it covers just the principal balance.

Q. And there is a separate interest record, is that right?

A. See, we get down here. Now, in here you start picking up

a four percent interest add-on loan which has interest added into it.

Q. Okay.

A. So in some cases --

Q. This will clarify it. On the first side of the card under the "Rate" column, almost all of the notes are marked either 6 or 7-1/4, is that right?

A. Yes, sir.

Q. There is one marked 4A, is that right?

A. Yes, sir.

Q. What does 4A mean?

A. That particular loan is an add-on interest rate loan.

Q. Is it a fair statement that a four percent interest add-on rate has an effective rate of approximately double that amount, so that it would be eight or nine percent?

A. Yes, sir.

Q. Is it also correct that a note with an add-on loan on it would be issued with the face amount which would include the anticipated loan plus the interest for the term of that particular loan?

A. Yes, sir.

Q. So a balance of twenty thousand eight hundred dollars includes some element of interest, the amount of which

Q. With the exception of the add-on interest rate loans, there would be some interest involved, is that right?

A. Yes.

Q. Now, calling your attention to Exhibit 8, you observe that financial statement is dated May 5, 1969?

A. Yes, sir.

Q. Referring to Exhibit 10A, can you tell us what the balance of the outstanding loans to Mr. Robinson was at the point when that financial statement was dated?

A. Sixteen thousand eight hundred eighty-seven dollars and fifty cents.

Q. Does the card marked Exhibit 10A and the card marked Exhibit 10B indicate that at all times subsequent to May 5th 1969 there was some outstanding balance owing by Mr. Robinson?

A. Yes, sir.

Q. There was never a point after May 5th 1969 when all of the loans covered by that ledger record had been paid, was there?

A. No, sir.

Q. Now, referring to Exhibit 10B, as of December 10th 1969 did you have any information regarding any outstanding loans owed by Mr. Robinson other than the information set

forth in Exhibit 8?

A. No, sir.

Q. At that time did you have any information regarding the amount of the outstanding accounts receiveable other than the information in Exhibit 8 as referred to in oral discussion between you and Mr. Robinson?

A. No, sir.

Q. At that time did you have any information regarding any mortgages on real property of Mr. Robinson other than the mortgage held by Marine Trust Company referred to in Exhibit 8?

A. No, sir.

Q. With regard to the item of personal property referred to on Exhibit 8, did you have any information regarding the value or identity of personal property of Mr. Robinson other than set forth in that exhibit as of December 10th 1969?

A. No, sir.

Q. In December 1969 were you aware that Mr. Robinson had given a collateral mortgage to East Buffalo Credit Union in March 1969 for the sum of at least seven thousand dollars?

A. No, sir.

Q. In December of 1969 were you aware that Mr.Robinson had a

substantial outstanding indebtedness exceeding, for example, fifteen thousand dollars?

A. No, sir.

Q. Would you explain, if you will, why you accepted Mr. Robinson's answer that he had no indebtedness when you knew he was a businessman, at least you understood he was a businessman?

A. He informed me that all of his indebtedness was to the Manufacturers and Traders Trust Company, that he did all of his banking at the M & T.

Q. I assume you knew or assumed at the time that he had an outstanding open account with the telephone company, if he had a telephone in his name, is that a fair statement?

A. Yes, sir.

Q. And I would assume that you assumed that he had current service from an electric company, is that correct?

A. Yes, sir.

MR. SHELDON: I am going to object to that line of questioning. Mr. Gardner is leading his own witness, did he assume. Why doesn't he ask him debts he assumed he had, and let the witness testify, not Mr. Gardner.

REFEREE McGUIRE: Would you read back the last --

MR. GARDNER: I will rephrase the question, your Honor. I accept with humility the remarks made by counsel.

BY MR. GARDNER:

Q. Mr. Spitzmiller, will you state for the record what, if any, types of indebtedness or identities of indebtedness you assumed might be in existence even though not specifically referred to on Exhibit 8?

A. I assumed that he had all of the natural utilities such as the gas, the electric, telephone company. I don't know. Whatever you have for normal month to month operation of a home.

Q. Did you assume anything with regard to his indebtedness with respect to monies loaned, for example?

A. No, sir. He told me that the borrowings that he had at the M & T bank were the only loans that he had.

Q. What business did you know Mr. Robinson to be engaged in?

A. Mr. Robinson informed me that he bought and sold Polish Krakus hams, and while he dealt with New York Commodities, very often at the end of the holiday period such as Thanksgiving time he could find it advantageous to buy hams, hold them in his own account to just before Christmas

and then resell the same ham sometimes even to the same business. For example, Wardynski's. And I am only using this as an example. He would buy from Wardynski after Thanksgiving and possibly sell back to Wardynski just before Christmas.

Q. And did you discuss at any time in any detail the profit and loss statement that is set forth on Exhibit 8 for identification?

A. Not in detail.

Q. Was there any discussion with Mr. Robinson about the profit and loss statement?

A. Yes. I mentioned to him that it showed that he earned thirty thousand eight hundred dollars, and that he really earned that much, did he, and he said yes.

Q. Was there any discussion between you and Mr. Robinson as to whether the thirty thousand eight hundred dollars came from the buying and selling of hams or from his work as a broker for American - New York Commodities or from a combination of that or was there simply no discussion as to that?

A. To the best of my knowledge, it was not discussed in any depth. And I believe I understood him to tell me that it was a combination.

Q. Now, referring again to the final note Exhibit 4 for identification, did Mr. Robinson come to your office on December 12th or did you meet him somewhere else?

A. He came to my office.

Q. What documents did you place before Mr. Robinson?

A. I showed to Mr. Robinson the letter which represents a commitment for a line of credit to the amount of thirty-five thousand dollars.

Q. Would this be Petitioner Exhibit 6 that you are referring to, Mr. Spitzmiller?

A. Yes, sir. This is a copy of the original. The original was given to Mr. Robinson.

Q. What else did you show him?

A. I explained to him at that time --

Q. For the moment, Mr. Spitzmiller, what other documents did you show him?

A. A loan agreement.

Q. And is this agreement which is attached to Petitioner Exhibit 6?

A. Yes, sir.

Q. And what else?

A. A Security Agreement.

Q. And --

A. Covering --

Q. And that is Petitioner Exhibit 6A?

A. Yes, sir.

Q. What else?

A. The letter addressed to Mr. Robinson which is entitled "Loan Purpose Agreement".

Q. And that is Exhibit 6B, is that correct?

A. Yes, sir.

Q. Were either Exhibit 6C or 6D in front of you and Mr. Robinson at that point?

A. No, sir.

Q. And then I assume you showed him Exhibit 4 for identification, is that correct?

A. Yes, sir.

Q. And did you also have him sign financing statements under the Uniform Commercial Code?

A. Yes, sir.

Q. Can you think of any other documents that were there at that time?

A. No, sir.

Q. Now, would you relate to the Court what conversations you had with Mr. Robinson and what occurred at your meeting with him on December 12th of 1969 starting, if you recall,

at the approximate time when Mr. Robinson arrived?

A. I believe he came in in the morning and came into my office with the intent and knowledge that he was coming in to --

MR. SHELDON: I am going to object as to what the intent and knowledge was of Mr. Robinson. How can he testify, your Honor, to what Mr. Robinson's intent and knowledge was.

REFEREE McGUIRE: Sustained.

BY MR. GARDNER:

Q. He came into your office. What happened then?

A. I asked Mr. Robinson to sign the commitment letter or a copy of the commitment and review with Mr. Robinson the documents that I was going to - or asking him to sign in connection with his loan.

Q. Now, will you be a little bit more specific. I assume you said "Hello" to him first and he said "Hello" to you, right?

A. Yes, sir.

Q. Can you recall from that point how the conversation went?

A. I don't recall the exact wording but what I did mention to him and he came into the office at my request to sign

the papers in connection with his loan. And after he had sat down I discussed with him that what we were trying to do was to develop a line of credit for him which would be like a revolving loan where he could increase the indebtedness, be paid on his receiveables, or sell his inventory, reduce the loan,and without having to come to me and have me to go see a Zone Supervisor he could automatically come in and sign notes which would take him up to a certain amount of credit. In this case the credit maximum which had been approved was thirty-five thousand dollars. I explained to him that from this date, which was the 12th, a period of one year we had agreed to establish this line of credit, and in the letter it mentioned two or three different ways which the line of credit could be terminated, and it also related the fee that we were asking that he pay to the bank in order that the bank have available to him credit in this amount.

Q. What was that fee?

A. Seven hundred dollars.

Q. Go ahead.

A. Mr. Robinson was pleased that --

Q. Excuse me.

A. Excuse me.

Q. Try to avoid Mr. Robinson's thought processes or

emotional reactions. You can describe his facial expression if you want or you can recite anything he said. Go ahead from there, if you will.

A. After that I told Mr. Robinson that in connection with this that we had an agreement prepared which outlined how the line of credit was to work. I explained to him that this was like the rules of the game and what we were agreeing to do and what we would expect that he would do in connection with the line of credit.

Q. Did you hand him the Loan Agreement either prior to or during the course of this discussion?

A. Not prior to that I recall. During the course of the conversation he was sitting at the desk immediately to my left, I was sitting like here (indicating), and I had given him a copy of the Loan Agreement.

Q. Go ahead in your own words?

A. I attempted to explain to him the details - not the details but the intent of the Loan Agreement, being that we would ask him for financial statements and we would possibly look at our collateral from time to time and he would have to make certain things available to the bank upon reasonable request, and that in turn he would use the money to buy inventory and carry accounts receiveable in

connection with his business.

Q. Did he read the Loan Agreement at that time?

A. I don't know whether he read the whole Agreement. He went through it. Whether or not he read the entire Agreement I couldn't tell you.

Q. Fine. Now, did you make any reference to Exhibit 6A and Exhibit 6B?

A. Yes, I did. As a matter of fact, you will note that in here --

Q. You are referring to Exhibit 6A under paragraph 2 on the first page where the word "Arctic" has been written in in ink, is that right?

A. Yes. And it was initialed here (indicating). It was misspelled here. It was typed beforehand. In talking to Mr. Robinson he informed me that we had misspelled it, and I correct it in pen and ink and initialed it, and so did he. At this point I was asking him is this where his hams were kept. I asked him in regard to "All of the inventory is and shall be stored and maintained at the address of Debtor set forth above,", which is 34 Carpenter Avenue, "or, if not, at" and he told us at Arctic Freezers, 197 Scott Street, Buffalo - I asked him where the hams were being stored, and that is where

they were being stored.

Q. What was your discussion with Mr. Robinson in connection with Exhibit 6A, if anything, beyond what you have already testified?

A. That we did have or we had already taken a lien on his inventory in accounts receiveable. This was to be a reaffirmation of that lien, and that the reason we had to know where the hams were that it is from time to time our practice to go out and look at inventory which has been pledged as collateral to the bank.

Q. And did he say anything in connection with this conversation?

A. No. Other than he corrected the fact that it was not spelled this way, and he told me the way it should have been spelled and we corrected it, and he initialed it and I initialed it.

Q. Did he look at Petitioner Exhibit 6A?

A. Yes, sir.

Q. Did he have this in his possession for some period of time before mailing - correction - before signing it, or what did happen, you put it in your own words?

A. Yes, he looked at it, and I couldn't say for certain whether or not he read it, and he asked if this was a form also

similar to one he signed before, I said yes, this is merely a reaffirmation of the Security Agreement which he had previously signed.

Q. Did he look at different pages or did he just look at the first page?

A. To the best of my knowledge, I believe he opened it up and looked at it. Whether he read it or not I could not say.

Q. Now, referring to Exhibit 6B, you also showed him this, is that right?

A. Yes, sir.

Q. Did you observe him reading this letter, it is a two page letter, right?

A. I believe he read it. I did explain the letter to him.

Q. What did you say to him?

A. How the proceeds of this loan were to be used for business purposes. This is a letter which we do use in connection with loans where a line of credit has been established. It provides that the proceeds of the loan be used for business purposes and that the borrower pay to the bank a fee to have available a line of credit at the bank.

Q. And did you say anything further concerning the contents of the letter as to what it did?

A. I don't believe I did.

Q. Okay. As of December 1969 did you have any information regarding Mr. Robinson's financial condition before you other than that which you have testified about before?

A. No, sir.

Q. In connection with the loan of December 1969 you discussed this matter with your superior Mr. Schifferle, is that correct?

A. Yes, sir.

Q. Did you refer in any way to the financial statements in your discussions with Mr. Schifferle?

A. Yes, sir.

Q. And will you advise the Court, please, what the conversations were between you and Mr. Schifferle or what else transpired in connection with your credit review?

A. I explained to Mr. Schifferle that our relationship with Mr. Robinson had always been handled as agreed, that Mr Robinson had always honored his obligations with the bank, when we had a time note he would come in promptly and pay the same or renew the same, that the statement we had in the file was dated April 25, 1969, and that it showed that Mr. Robinson had accounts receiveable and merchandise totaling approximately forty thousand dollars i

addition to other assets which he had being his home, automobile, cash value life insurance, and that Mr. Robinson had assured me that his financial statement or his present financial statement in November of 1969 was relatively the same, and that I had also asked Mr. Robinson to complete a more current financial statement, and based upon the financial statements which we had in the file and based upon Mr. Robinson's performance with us in the past that I would recommend we consider a line of credit for him. I also explained to Mr. Schifferle how Mr. Robinson would want monies for periods of time and then collected money and then need additional money, and it appeared to me that a line of credit was the proper type of financing for a gentleman of this type. He agreed and told me to have the papers drawn up, prepare a letter for a line of credit, and take care of it.

Q. Now, in connection with the drafting of the papers, were these papers similar to papers you had used in some other transactions in the past?

A. Yes.

Q. Referring to Exhibit 3A and 3B you testified that you prepared that memorandum on January 13th. Was there a reason for your preparing that memorandum?

A. Normally we always prepare a memorandum for the file, but in this case I believe Mr. Sheldon or yourself had suggested that I be very thorough in writing this one up.

Q. And this memorandum was placed in the bank's file at that time, is that right?

A. Yes, sir.

Q. Was the memorandum true and accurate to the best of your knowledge and belief when you dictated it?

A. Yes, sir.

MR. GARDNER: You may ask.

REFEREE McGUIRE: We will take a five minute recess.

(Whereupon, a recess was then taken at 3:20 p.m.)

PROCEEDINGS: After recess, 3:25 p.m.

APPEARANCES: Same as before noted.

REFEREE McGUIRE: Proceed.

R O B E R T F. S P I T Z M I L L E R, J R., having been previously duly called and sworn as a witness on behalf of the Petitioner, resumed the witness stand and testified further as follows:

REFEREE McGUIRE: You may ask, Mr. Sheldon.

MR. SHELDON: Thank you, your Honor.

REFEREE McGUIRE: Off the record.

(Off the record discussion was had.)

MR. GARDNER: Your Honor, I would like to offer in evidence at this point Exhibits 2 through 10B including all sub exhibits with letters after them and with regard to Exhibit 6 understanding that to include as a unit all papers attached to it.

REFEREE McGUIRE: Let's see. Exhibit 1, has that --

MR. GARDNER: That has been entered, your Honor, by stipulation.

REFEREE McGUIRE: That has been received. So you are now offering the remaining exhibits marked for identification?

MR. GARDNER: Right.

MR. SHELDON: I am just going to review the documents, your Honor, just to make sure.

Your Honor, I have no objection to the following exhibits, 4, 5, 6, and its group, 6A, 6B, 6C, whatever it is, 6D, 7, 8, and Exhibits 10A and 10B.

I do have objections to --

REFEREE McGUIRE: All right. Then Exhibits 4, 5, 6, 7, 8, 10A, and 10B, are received.

(Whereupon, document purporting to be Manufacturers and Traders Trust Company Promisory Note in the amount of thirty-five thousand dollars, bearing date of December 12, 1969, previously marked Petitioner Exhibit No. 4 for identification was then marke and received in evidence.)

(Whereupon, document bearing "Security Agreement(Chattel Mortgage" bearing date of 1-16-69 previously marked Petitioner Exhibit No. 5 for identification was then marked and received in evidence.)

(Whereupon, carbon copy of a Letter to Mr. Jack Robinson from Robert F. Spitzmiller, Jr., bearing date of December 12, 1969, consisting of one page, and document purporting to be "Loan Agreement" bearing date of December 12, 1969, consisting of four pages, previously marked Petitioner Exhibit No. 6 for identification was then marked and received in evidence.)

(Whereupon, document bearing "Individual Financial Statement", bearing date of June 5, 1970, previously marked Petitioner Exhibit No. 7 for identification was then marked and received in evidence.)

(Whereupon, document bearing

"Security Agreement", bearing date of December 12, 1969 previously marked Petitioner Exhibit No. 6A for identification was then marked and received in evidence.)

(Whereupon, document purporting to betoriginal of a Letter to Mr. Jack Robinson from Robert Spitzmiller, Jr., bearing date of December 12, 1969, consisting of two pages, previously marked Petitioner Exhibit No. 6B for identification was then marked and received in evidence.)

(Whereupon, document bearing "Security Agreement", bearing date of January 16, 1969, previously marked Petitioner Exhibit No. 6C for identification was then marked and received in evidence.)

(Whereupon, document bearing "Inventory and Accounts Receiveable Security Agreement", bearing date of January 16, 1969 previously marked Petitioner Exhibit No. 6D for

identification, was then marked and received in evidence.)

(Whereupon, document bearing "Individual Financial Statemtnt", bearing date of 5-5-69 previously marked Petitioner Exhibit No. 8 for identification was then marked and received in evidence.)

(Whereupon, a Card purporting to be a Manufacturers and Traders Trust Company printed form card previously marked Petitioner Exhibit 10A for identification was then marked and received in evidence.)

(Whereupon, a Card purporting to be a Manufacturers and Traders Trust Company printed form card previously marked Petitioner Exhibit 10B for identification was then marked and received in evidence.)

MR. SHELDON: I do have objections to Exhibits 2, 3A, 3B, and 9.

On Exhibit 2 it is my opinion that this card has not been validly identified. There are three different utensils used. There is no date on it in any way. There is nothing that indicates that Mr. Robinson has in fact given this information, except what they say. Then there is a question which is another objection as to when it was even given. There is some question as to dates here. First, there was testimony here it was a week before January 13th, then there was testimony it was the day before, then two days --

REFEREE McGUIRE: Just a moment, Mr. Sheldon.

What is the basis for that offer, Mr. Gardner?

MR. GARDNER: Your Honor, this card has been identified both by Mr. Sheldon and Mr. Spitzmiller. The identity is no problem at all. It is made out in the handwriting of Mr. Spitzmiller.

He specifically referred to it. And only other handwriting on the card is in the hand of George Sheldon, which has been identified.

I might say I am only offering Exhibit 2 with respect to the one side on which the listing of the account debtors and the amounts are listed. I see no identity problem whatsoever. I don't understand the objection. But I respectfully submit that it is receiveable for such examination that the Court wishes to give it. Just as the notes of someone who has taken down the statement of Mr. Robinson would be receiveable with regard to the evidence taken by the Court. There has been no question made by Mr. Robinson's attorney as to the nature in which it was recorded and the time it was given. I submit this is a record of the bank which is competent.

MR. SHELDON: With respect to the remaining exhibits, Exhibits 3A and 3B is just the opposite of what Mr. Gardner stated that it was brought out that the statement of January 13, 1971 which Mr. Spitzmiller said he dictated has what he testified to typographical errors. I don't know whether they are or not. This is Mr. Spitzmiller's memorandum. It is dated January the 13th. But he has testified that he talked to either Mr. Gardner or Mr. Sheldon and they told him to be exact, that it is only his answer to what happened. It is inaccurate as a typographical situation in my opinion. And that is a bank record. Now, if the Court wants to receive it it should only be on the stipulation that it is being received on the basis not to the truth or veracity of what it contains as an accurate business record of the bank but only that it is Mr. Spitzmiller's recollection at some

later date probably than January 13th of 1971, we will bring that out later, as to what is contained in the meetings of January 11th and January 13th.

REFEREE McGUIRE: Well, as I understand the memorandum, Mr. Spitzmiller, it is customary in the practice of the bank to make such memorandums regarding all transactions, is that correct?

THE WITNESS: Yes, sir.

REFEREE McGUIRE: And those are maintained as a regular - in the regular course of business and as a part of the bank's records?

THE WITNESS: Yes, sir.

REFEREE McGUIRE: And it is the bank's practice to maintain such records regarding all transactions, is that correct?

THE WITNESS: Yes, sir.

REFEREE McGUIRE: That is Exhibit 3A and 3B.

Now, Exhibit 9.

MR. SHELDON: Yes. With respect to Exhibit 9, your Honor, my objection is obvious,

it is a photocopy, it is not an original it is not signed by Mr. Robinson, it is a photocopy only of the signature. It is imported in pieces. There is nothing here that shows it is all interconnected.

REFEREE McGUIRE: I don't recall what Exhibit 9 was.

MR. SHELDON: It is a Personal Financial Statement of 1968 I believe.

REFEREE McGUIRE: Mr. Gardner, was there testimony as to what occurred or what happened to the original of this?

MR. GARDNER: No, there was not, your Honor.

UNIDENTIFIED VOICE: Bill, I think we can find the original.

MR. GARDNER: I will withdraw the offer of Exhibit 9 right now, without prejudice.

REFEREE McGUIRE: All right.

Then Exhibit 9 is withdrawn.

The objection to Exhibit 3A and 3B is overruled. That will be received.

Exhibit 2, objection sustained.

(Whereupon, typewritten document purporting to be Credit Memo written up by Mr. Spitzmiller, consisting of two pages, previously marked Petitioner Exhibit No. 3A and 3B for identification respectively, was then marked and received in evidence.)

MR. GARDNER: Your Honor, may I make just one point. I don't want to press the Court, but I do want to draw the attention of the Court to the fact that Exhibit 9, which is the Financial Statement of July 1968, is possibly not particularly relevant to the precise claims of the Trust Company in this proceeding. The Court has received by stipulation,however, the transcript of the examination of Mr. Robinson on the earlier occasion which transcript was marked Exhibit 1 and is in evidence. Exhibit 9 was Exhibit 6 on that examination. I do

not say that this exhibit has any particular weight in connection with the issues of this proceeding. And I don't submit it as having any particular weight. If the Court is reviewing Exhibit 1, however, the Court is going to have a gap in trying to understand that exhibit whenever Exhibit 6 is referred to if this is not before the Court. It is in light of that that I offered Exhibit 9, so that we have a complete record, trusting the Court to discount the exhibit to the extent the fact that it is a copy or the fact that it relates to events of a prior year have any influence. I think the Court might well put it in evidence just to have the record complete. Where if we were dealing with a jury it would be more important to be precise and keep it out if the objection is well founded.

REFEREE McGUIRE: Well, I will have to leave that to Mr. Sheldon.

Mr. Sheldon, do you continue your objection to Exhibit 9?

MR. SHELDON: Your Honor, at this point until I have an opportunity now -- You see, I made the same objection at that time. The difference between that time and this time is that at that time only Mr. Robinson was testifying and not Mr. Spitzmiller, so that this is being offered in evidence on the basis of Mr. Spitzmiller's testimony, not on the basis of Mr. Robinson's testimony. I think there is a difference in that my objection was overruled on the basis that the Court asked at that time the witness if he recognized the document. Now, I think also, if the Court please, it is a little different between that particular proceeding and this, and that this is a photocopy in four different pieces , and not that I --

REFEREE McGUIRE: Well, --

MR. SHELDON: -- not that I don't trust it, it is just that I have an obligation --

REFEREE McGUIRE: I will of course sustain the objection if you press it.

MR. SHELDON: They have the original and they can't give it to the Court so that I have the opportunity to compare it, and if I agree that there is a comparison of the original, then let it go in.

REFEREE McGUIRE: I will sustain the objection to Exhibit 9.

MR. SHELDON: May I ask, your Honor?

REFEREE McGUIRE: Yes, of course.

CROSS EXAMINATION BY MR. SHELDON:

Q. Mr. Spitzmiller, are you a college graduate?

A. Yes, sir.

Q. And what school did you go to?

A. Trinity College.

Q. Did you obtain a degree?

A. Yes, sir, I did.

Q. And what was the degree in?

A. Bachelor of Arts.

Q. And what was your major?

A. Economics.

Q. And did you have a post graduate degree or degrees?

A. I have no degrees.
Q. You never received a degree from a college?
A. Post Graduate.
Q. You have no post graduate degrees, is that your answer?
A. Yes, sir.
Q. When did you graduate from college?
A. In 1959.
Q. And you immediately went to work for the Manufacturers and Traders Trust Company?
A. Yes, sir.
Q. And in what capacity?
A. As a management trainee.
Q. And were you assigned to a particular office?
A. For three years I rotated throughout the bank learning the different areas,phases of the bank, after which I was assigned to the Mortgage Department.
Q. And when were you assigned to the Delaware-Chippewa Office of the Manufacturers and Traders Trust Company?
A. July 1st 1969.
Q. And when you went to that office you went in the capacity as manager?
A. Yes, sir.
Q. And did you have a training period at that particular office before you assumed the obligations and responsibili

of the management?

A. No, sir.

Q. Were you at a particular office prior to that time?

A. Yes, sir.

Q. What office was that, sir?

A. The Union Square office.

Q. And were you the manager of the Union Square Office?

A. Yes, sir.

Q. And for how long a period of time were you the manager of the Union Square Office?

A. Approximately three months.

Q. And had you served in any capacity as Assistant Manager or Manager of any other office of the bank prior to assuming the responsibilities at the Delaware-Chippewa Office?

A. Not as an Assistant Manager or Manager. I've been at one M & T Office as a Loan Officer.

Q. And for what period of time was that?

A. Approximately six years.

Q. Now, when you were assigned on July 1st of 1969 to the Delaware-Chippewa Office in the capacity as Manager you succeeded whom?

A. Thomas Lacata.

Q. And is he still with the Manufacturers and Traders Trust Company?

A. No, sir.

Q. And did he remain in the office after you took over the management on July 1st of 1969?

A. No, sir. I arrived at the Delaware Office about the middle of May and spent about approximately six weeks with Mr. Lacata. He departed the office on July 1st and I assumed the full responsibility of the office at that time.

Q. So you were acquainted with the files of the office from May 1969 until July 1st when you took over the full responsibilities, is that correct?

A. Yes, sir.

Q. Had you discussed with Mr. Lacata Mr. Robinson's account at any time?

A. Yes, sir.

Q. And are there any memorandums of the bank with respect to your discussions with Mr. Lacata pertaining to this particular account?

A. There would not be specific memorandums in the file of discussions between Mr. Lacata and myself. We would have reviewed the memorandums that were already in the file, and perhaps he may have if I had questions explain whatever may have been there.

Q. Do you have any recollection as to your conversations with Mr. Lacata pertaining to Mr. Robinson's accounts?

A. Yes, sir. He advised me from time to time he had feelings of concern. Yet he also immediately stated that Mr. Robinson had always been honoring his obligation, and everything had come the way Mr. Robinson had said that it would be, and he had no reservations about the loan.

Q. Did he ever indicate to you that he had refused Mr. Robinson's request for additional monies?

A. Yes, sir.

Q. And do you know when those requests were refused?

A. I do not recall.

Q. Would they have been prior to you appearing at the Delaware-Chippewa Office in May of 1969?

A. If my memory serves me correctly, on at least one occasion Mr. Robinson had asked for an amount of credit which Mr. Lacata thought was in excess; however, he had loaned money in amounts something smaller than the original request.

Q. Was there ever a time prior to you assuming the management of the office that Mr. Lacata had refused to give Mr. Robinson additional monies at all?

A. Not that I recall.

Q. Now, did there come a time after you assumed the management on July 1st of 1969 that Mr. Robinson requested a loan and you refused?

A. Yes, sir.

Q. And when was that?

A. I believe it was in August, about August.

Q. Of 1969?

A., 1969.

Q. And --

A. Excuse me. Let me refresh --

Q. Sure.

A. No. I don't recall that it was August of 1969. It was in the summer of 1970. Let me see. Now, wait a minute. The line of credit became effective --

MR. GARDNER: Your Honor, I have records that the witness can refer to is the Court wishes, if counsel wishes.

MR. SHELDON: Sure.

MR. GARDNER: Do you want to refer to the records?

THE WITNESS: If I may.

Yes. In July of 1969 Mr. Robinson requested an additional credit from

the bank which I declined. Subsequently to my declining Mr. Robinson visited with Mr. Yellen who maintains substantia accounts at our Midtown Office. He in turn visited with Mr. Oddy, a Senior Vice President, and the officer in charge of the Midtown Office, and I received a call from Mr. Oddy. Mr. Oddy asked that if I was planning to deny or had denied the extension of credit would I please send the files over to his office and he would consider a loan. After visiting with Mr. Oddy I again visited - or I did visit with Mr. Schifferle, and we loaned Mr. Robinson an additional twelve thousand dollars which brought his credit indebtedness to twenty-four thousand four hundred seventy-five dollars which was secured by a Security Agreement.

BY MR. SHELDON:

Q. Do you have any --

A. I'm looking to see if there were any other occasions.
Q. Go right ahead. I'm sorry to interrupt.
A. Mr. Sheldon, was your question was this the only time that we denied credit up until December the 12th 1969?
Q. My question was did you ever deny Mr. Robinson credit on his request?
A. Also in August of 1971 we had a request from Mr. Robinson for additional funds.
Q. In August of 1971?
A. Yes, sir. In August of 1970 at which time I visited with Mr. Sheldon, George Sheldon, and we told him --
Q. This is only before, I think my question was before December of 1969?
A. Excuse me.
Q. Go ahead. Finish it.
A. At that time Mr. Sheldon and I decided this would take the loan with the amount requested up to approximately seventy-five or seventy-six thousand, and I advised Mr. Robinson that we would not be in a position to extend the credit at that time.
Q. The time that you refused the loan, Mr. Spitzmiller, in July of 1969 you had reasons to believe that Mr. Robinson could not pay any additional indebtedness?

A. It was not a matter of whether or not he could pay additional indebtedness. I felt at the time it would be appropriate that he reduce or pay out his borrowings. The time of the year was July. I felt that in the type of business, as I understood it, that Mr. Robinson was in, that it was not an appropriate time to be buying additional ham.

Q. Mr. Yellen did not guarantee this obligation in any way, did he?

A. No, sir.

Q. Would it be a fair conclusion to say that the loan would have been refused but for Mr. Yellen's intervention with Mr. Oddy?

A. I can't answer that question. I don't know.

Q. Well, you had refused it and you were the Manager of the office, is that correct?

A. I refused it. I have also refused loans and reconsidered them and made them at a later date.

Q. That is correct. But in this particular instance, from your testimony you indicated that Mr. Oddy said that if you were going to refuse the loan he was requesting the file in order that he may review it for the basis of granting the loan, is that correct?

A. All he said was that he would consider it. Whether or not he would have made the loan I don't know. He may have, he may not.

Q. The end result was after Mr. Yellen's intervention with Mr. Oddy a loan was granted, and additional loan of twelve thousand dollars, bringing the indebtedness to --

A. Mr. Oddy did not intervene on Mr. Robinson's behalf. All he asked was if I was going to deny the credit to send the files over that he may consider it.

Q. And then what happened?

A. I visited with Mr. Schifferle, I reviewed the loan application, and agreed to extend the credit at the Delaware Office.

Q. Did you ask for a new financial statement at that time?

A. I believe we asked Mr. Robinson if the statement which we had in the file still represented accurately his financial position, and he said that it did.

Q. And that was the same statement,Mr. Spitzmiller, that you reviewed in refusing the loan at that time, is that correct?

A. Yes, sir.

Q. Mr. Spitzmiller, I show you Petitioner Exhibit 10A in evidence, and ask you what the second line - if you would

describe to the Court what the second line on page - well, let's say on sheet number 1 indicates?

A. The ledger card, second line, dated January 16, 1969?

Q. Yes.

A. It reads the note number 11229, Jack Robinson as the maker, endorser or collateral "Uns.".

Q. What is "Uns.", what does it mean, sir?

A. Unsecured. I believe that is in here. The rate was five and one half percent, due date is "C.P." which is - it should have had an "L.", Commercial Purpose Loan thirty-three hundred dollars bring the total indebtedness to twenty-two thousand nine hundred ninety-nine dollars and ninety-nine cents.

Q. And you state for the record, Mr. Spitzmiller, that the "Uns." in that column marked "Endorser or Collateral" means unsecured?

A. This notation is only used by the bank.

Q. But "Uns." in the column "Endorser or Collateral" you say means unsecured?

A. Yes.

Q. Is this the automobile loan?

A. Yes, sir.

Q. Do you remember a conversation that you had with me in

January 1971 pertaining to the automobile?

A. I had more than one conversation with you. Would you --

Q. Yes. Pertaining to the automobile?

A. Could you define which conversation you are --

Q. Yes. The conversation pertaining to taking possession of the automobile by the M & T Trust Company?

A. Are you referring to the time that you called me at my office at Delaware Avenue?

Q. Yes.

A. You called my office and asked me if I realized or knew that you were now representing Mr. Robinson, and I said that I heard that you were. You asked me why I had called Mr. Robinson's house, and I informed you that I had called merely to ask if he would be good enough to deliver the station wagon to the bank as we held that as collateral for our loan. You told me that I was out of order, that I had no business calling Mr. Robinson. I said that I was not an attorney, that I was a banker and had merely called my customer to request that he deliver to the bank the collateral which we held. And you told me that that was poor etiquette and poor taste, and that any dealings from that time forward that I should have with you and I should go to my attorney and he would get in touch with

you, but under no circumstances should I call Mr. Robinson.

Q. And this is the same collateral which you claim from this supposedly accurate business record of the bank is an unsecured application, is that correct?

A. No, sir.

Q. Well, is there another obligation on there that involves the automobile?

A. It isn't based upon this that I was asking for the automobile, but rather the Security Agreement.

Q. But are you trying to tell the Court at this time, Mr. Spitzmiller, that the bank's records are not accurate?

A. I did not say that.

Q. Well, you are saying now that you have a security agreement on the automobile on an obligation that arose on January 16th of 1969, and at the same time the records which you have offered into evidence as an accurate business record of the bank shows that it is an unsecured obligation?

MR. GARDNER: Your Honor, I object to the questi There has been no testimony that the business records of the bank are inaccurate. The only testimony is that it a record kept in the ordinary business of the bank and is receivable

If there is inaccuracies it can be brought out. But I don't think the witness should be badgered by putting words into his mouth that he has already testified to.

REFEREE McGUIRE: Sustained.

BY MR. SHELDON:

Q. Now, Mr. Spitzmiller, Mr. Robinson was in the office of the bank quite often prior to December of 1969, is that correct?

A. Yes, sir.

Q. And he transacted his loans, transacted business, obtained loans on almost a regular basis with the bank, is that correct?

A. Yes, sir.

Q. Would it be fair to say that from the records of the bank almost every month there would have been a new loan, is that correct?

A. I'm not sure that it would be that often. I would have to look at the records, the ledger card before I could answer this. Here, I have records here. No, sir. It was not on a monthly basis. He may have come into the bank at least on a monthly basis, but we were not granting

credits on a monthly basis.

Q. I show you Petitioner Exhibit 10A in evidence, and ask you if you will recite to the Court the months in which a loan was granted to Mr. Robinson in the year 1969?

A. In January -- Do you want the date?

Q. I think the month is sufficient.

A. January, -- February was a renewal of the January note.

Q. Well, would that be as a classification a new transaction?

A. No, sir. It was a renewal of an existing loan. In March there was another renewal of the same loan. In March, the latter part of the month, an additional five thousand dollars was extended. In April there was a renewal of the fourteen thousand - excuse me - in April he paid approximately five thousand dollars which reduced his borrowings. In May of 1969 he renewed but reduced the note again. In June he renewed but reduced the note. In other words, these are not additional extensions of credit, but rather represent payments on an existing loan. In July --

Q. Let me just interrupt you for a moment.

A. Yes, sir.

Q. You say, in other words, you had as a hypothetical a twelve thousand dollar obligation?

A. Yes, sir.

Q. He paid a thousand dollars, it was a thirty day note, let's say he paid a thousand dollars. What was then the result as to the new obligation, was it a renewal or --

A. It would be a renewal of that note for the lesser amount.

Q. For the eleven thousand?

A. It depends where you start. If you start at ten and he paid one thousand, it would be a renewal, but the new note would be in the amount of nine thousand. Now, this is on a time note.

Q. A thirty day note?

A. Yes, sir. Not on a demand note.

Q. All right. You may continue.

A. In July he came in and reduced the note by roughly two thousand dollars. In August he came in and reduced the note by one thousand dollars. In September he came in - this is September 15th 1969, and at that point we extende him an additional - we extended him an additional twelve thousand, bringing the amount up to twenty-four thousand four hundred and seventy-five dollars. On August the 18th he came in and paid one thousand dollars.

Q. Was there a note in August?

A. Yes, sir. It was a renewal of the note dated July the 17th

Q. How much was the note of July 17th?

REFEREE McGUIRE: Just one moment.

Go right ahead.

THE WITNESS: The note of July the 17th was for twelve thousand dollars.

BY MR. SHELDON:

Q. Mr. Spitzmiller, it is fair to say then, although I might have phrased the question incorrectly, there was some sort of transaction with the bank every month in 1969 where either a note was renewed or a new loan was given, or a note was partially paid and a renewal of the outstanding obligation, but it was in every month of that year, or just about, is that correct?

A. Yes, sir.

Q. And you testified that in the early part of 1969 there were three notes and three successive notes in the amount of fourteen thousand five hundred, and that on March 26th of 1969 you gave an additional five thousand even though there had been no reduction of the fourteen thousand five hundred dollar obligation to the bank, is that correct?

A. Well, there had been a reduction in the indebtedness. It had been reduced from a high credit in 1969 of twenty-two thousand nine hundred ninety-nine dollars and

ninety-nine cents to seventeen thousand five hundred and twenty-five dollars. The extension of the additional five thousand brought the indebtedness to twenty-two thousand five hundred and twenty-five dollars.

Q. But that running balance, which is the right column on that ledger, --

A. Yes, sir.

Q. -- includes also payment on that automobile loan, if I may classify it as such, the one loan of January 16th of 1969?

A. Yes, sir.

Q. Mr. Spitzmiller, when you renewed the obligations of --

A. At this point I'm testifying from the records of the bank.

Q. Yes.

A. I was not at the office during this period of time.

Q. I appreciate that. But you are showing from the records that the bank renewed the fourteen thousand five hundred dollar obligation, those three months, without regard to the payment since the balance due to the bank at the time of the first fourteen thousand five hundred dollar obligation on January 23rd 1969 was over twenty-two thousand or twenty-three thousand?

A. You're talking about these renewals here?

Q. Yes.
A. That is not uncommon.
Q. It is not uncommon to extend the term?
A. For an additional thirty days.
Q. Even though not reducing the note in this case the bank felt that Mr. Robinson was a good enough risk to extend him another five thousand dollars on May 6th 1969?
MR. GARDNER: I object to what the bank felt, your Honor. The witness was not there at the time. He is testifying from records; he can say what was done.
REFEREE McGUIRE: Sustained.
BY MR. SHELDON:
Q. So there was another five thousand dollars granted on May 6th 1969, is that correct?
A. The records so indicate.
Q. Now, Mr. Spitzmiller, what is the difference between the stamp "Renewed" and the stamp "Paid", and when is one stamp placed on a note and when is another?
A. Often a note will be stamped "Paid", our Audit Department doesn't agree with this, but when a portion of a loan has been paid and not the entire amount even though there is a renewal. As an example we take this fourteen thousand

five hundred dollar note in April of 1969, that note was reduced to fourteen thousand dollars and renewed. It is possible that at that time the note may have been stamped "Paid". It should have been stamped "Renewed".

Q. If you were to place on a note "Not to be Renewed", what would that mean?

A. Pardon?

Q. If you were to place on a note at the time of its inception the words "Not to be Renewed", what would that mean?

A. That the Discount Department has no authority whatsoever to renew that note without going back to the loan officer.

Q. And who places it on, the Discount Department places that notation on?

A. The loan officer. He may not do it, he may direct that it be done.

Q. What was Mr. Robinson's balance, from the records, and you were at the bank at that time I assume on September 15th 1969, prior to the granting of a twelve thousand dollar loan?

A. On September the 16th?

Q. September the 15th?

A. September 15th? Prior to -- That would be twenty-three thousand three hundred thirty-seven dollars and fifty cents. A payment was made of one hundred thirty-seven

dollars and fifty cents which reduced the loan to twenty-three thousand two hundred dollars.

Q. Was there then the loan noted of September 15th 1969?

A. For twelve thousand dollars.

Q. Yes.

A. All right. This was a renewal apparently of one or more notes previously. I believe it probably was a renewal. The due date was on July 17th 1969. There was a note for twelve thousand dollars. And that note matured on September the 15th of 1969. On September the 15th 1969 a new note was taken for twelve thousand dollars which was due September 29th of 1969.

Q. Then what happened according to the records?

A. According to the records on September the 18th we received a five hundred dollar payment, and on September the 26th we received a payment of twelve thousand dollars - excuse me - we received a payment of - yes, sir - of twelve thousand dollars which reduced the indebtedness to ten thousand seven hundred dollars.

Q. Did you give a loan on September the 18th 1969?

A. Yes, September 18th?

Q. Yes. Three days after the loan indebtedness --

A. This was a different thing. It involved a different note.

There was the note which was dated August the 18th for nine thousand dollars. On September the 18th he came in and paid five thousand dollars and renewed that note for eighty-five hundred dollars.

Q. In other words, what you are advising in response to my questions, Mr. Spitzmiller, Mr. Robinson would have had two and sometimes three open notes with the bank at the same time, is that correct?

A. At this period of time, yes.

Q. And after this period in September 1969 when you were the manager of that office and after a loan had been granted in July after it was refused did you increase or give him another loan in October of 1969?

A. Yes, sir.

Q. And how much was the amount of that loan?

A. That loan renewed the old note of eighty-five hundred and provided new funds which brought the balance up to twenty-eight thousand seven hundred dollars.

Q. What was the amount of that new note?

A. An additional eighteen thousand dollars.

Q. So that the balance in October of 1969 at the time of the October 10th note was twenty-eight thousand and some dollars is that correct?

A. Yes, sir.
Q. Did you ask Mr. Robinson for a new financial statement at that time?
A. Are you referring to October 10th of 1969?
Q. That is correct.
A. I believe we were operating with the financial statement of - I don't have it --
Q. Of April of 1969, April 25th to be exact?
A. Yes, sir.
Q. And you continued to give him credit after you had originally refused him credit in July of 1969, is that correct?
A. The refusal of credit in July had been somewhat predicated upon a discretionary matter that Mr. Robinson was using the money for the carrying of inventory and/or receiveables. We were of the opinion that July was not the proper time to be buying additional ham.
Q. What was Mr. Robinson's balance in July?
A. In July of 1969?
Q. Yes.
A. Which date are you referring to?
Q. The date when he made application for that loan that you denied?
A. Could you tell me exactly which day it was that he made

the applicatinn?

Q. You testified to it. I don't know. You said in July you refused the loan.

A. During the month of July there are entries here. On the exact day he made the request --

Q. What is the range?

A. The range in the month of July is from fourteen thousand to twenty-four thousand.

Q. The twenty-four thousand though is after the twelve thousan

A. Yes.

Q. So what was the lowbalance prior to the granting of the twelve thousand dollars that was originally refused?

A. Fourteen thousand two hundred seventy-five dollars. Wait. Excuse me. Twelve thousand four hundred seventy-five dollars.

Q. We have gone down to twelve thousand fourhundred seventy-five dollars, and you still refused the loan and then thereafter the loan was granted regardless of how it was, is that correct?

A. (No response)

Q. I mean when I say regardless I mean not getting into the fact of the other transaction which we have already covered, is that correct?

A. I'm not sure that I understand what you mean by other matters that we have covered.

Q. Well, the testimony that Mr. Yellen entered the picture and Mr. Oddy called you, and so forth and so on, prior to that time you had refused a loan when the balance was twelve thousand four hundred seventy-five dollars?

A. Yes, sir.

Q. Okay. Mr. Spitzmiller, do you recall that Mr. Robinson always made his interest payments on time?

A. Yes, he did.

Q. And that was on all his obligations?

A. To the best of my knowledge, he did.

Q. And on the basis of the payment of interest, on the basis of the payment of his obligations and the discussions with the bank officers, it was your opinion after July of 1969 to continue to grant him additional monies, is that correct?

A. Mr. Robinson had always handled his affairs at the bank as he agreed. At the time of the request we did not particularly agree that it was an advantageous time to be buying additional ham. He visited with me, and like anyone when a loan is turned down they very often will either call you or visit with you and see if they can't

appeal to your feelings, and so forth, to please extend additional credit. In this case I visited with Mr. Schiffer and we agreed to extend the additional credit for the purchase of hams and carrying of inventory.

Q. Now, you testified that toward the latter part of November 1969 Mr. Robinson came to you at the bank and requested additional monies or a line of credit, is that correct?

A. Yes, sir.

Q. And at that time what amount was being discussed?

A. I believe had requested additional monies which would bring his indebtedness up to thirty-five, forty thousand dollars.

REFEREE McGUIRE: Excuse me, Mr. Sheldon.

Off the record.

(Off the record discussion was had.)

MR. GARDNER: Mark this Petitioner Exhibit 9A for identification.

(Whereupon, original of document bearing "Personal Financial Statement" bearing date of 7-16-68 was then marked Petitioner Exhibit No. 9A for identification.)

REFEREE McGUIRE: For the record, the bank now has produced the original of Exhibit 9 which will become 9A, and Exhibit 9 and 9A will be received in evidence without objection, is that correct, gentlemen?

MR. SHELDON: Yes.

MR. GARDNER: And reserving the right to Mr. Sheldon to point up any inaccuracies or to renew an objection later on if he finds any inaccuracies.

(Whereupon, photostat of a document bearing "Personal Financial Statement", bearing date of 7-16-68 previously marked Petitioner Exhibit No. 9 for identification was then marked and received in evidence.)

(Whereupon, original of document bearing "Personal Financial Statement", bearing date of 7-16-68 previously marked Petitioner Exhibit No. 9A for identification was then marked and received in evidence.)

MR. SHELDON: Off the record.

(Off the record discussion was had.)

REFEREE McGUIRE: All right.

Gentlemen, why don't we step into chambers for a moment and we will fix an adjourned date.

Adjourned to December 21, 1971 at ten a.m.

* * * *

In the Matter

of

JACK ROBINSON in Bankruptcy

Bankrupt No. BK-71-376

I, EDNA J. PACZYNSKI, do hereby certify that I attended at the time and place above mentioned and took a stenographic record of the proceedings and testimony in the above-entitled claim, and that the foregoing is a true and correct copy of the same and the whole thereof, according to the best of my ability.

Edna J. Paczynski
Shorthand Reporter

Dated: December 20, 1971.

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BANKRUPTCY COURT OF THE UNITED STATES OF AMERICA

IN THE MATTER OF:

JACK ROBINSON,

Bankrupt.

MINUTES OF HEARING held at the U. S. Court House, Room 308, Buffalo, New York, on Tuesday, December 21, 1971, commencing at 10:00 A.M.

BEFORE: BERYL E. McGUIRE,

Referee.

APPEARANCES: DONALD P. SHELDON, ESQ.,
Representing the Bankrupt.

WILLIAM H. GARDNER, ESQ.,
Representing the Manufacturers and Traders Trust Company.

I N D E X

WITNESS	CROSS	REDIRECT	RECROSS
Robert F. Spitzmiller	4	44	55

E X H I B I T S

Petitioner's	In Evidence
Exhibit No. 11	3
No. 12	6
No. 13 A - E	13
No. 14	13
No. 15	39

ROBERT F. SPITZMILLER, recalled as a witness, having previously been duly sworn, was examined and testified further as follows:

MR. SHELDON: For the record, at the conclusion of the hearing on December 2nd Mr. Gardner reminded me that at the first meeting of the creditors, at the adjourned first meeting a motion had been made to reflect the said dates when the debt obligations were incurred. I am handing over to the Court this date three copies of said amended schedule with three creditors whose claims are unsecured. It is our position that schedule A-2 reflects dates with respect to the obligations and close proximity to the dates, being those when the securing agreements or financial statements were filed and/or when the mortgages were recorded. I think for the most part this would cover the situation. I have also handed to Mr. Gardner an

extra copy.

MR. GARDNER: Your Honor, I would move for the record that the papers which counsel has just referred to be marked as an exhibit and received in evidence and made a part of this hearing to the extent that they contain references to the indebtness incurred at dates prior to those at issue in this proceeding.

MR. SHELDON: No objection.

THE REFEREE: It will be marked as Petitioner's Exhibit No. 11 and received in evidence.

(Whereupon, Petitioner's Exhibit No. 11 was so marked and received in evidence.)

MR. SHELDON: Just one other point, I don't know if it is on the record or not that Exhibit 9 A was placed in evidence or was identified, it is a financial statement dated on or about July 12th of 1968 and the original has now been produced which is marked 9 A in evidence.

THE REFEREE: You had withdrawn that exhibit according to my notes. Are you re-offering it?

MR. GARDNER: It is re-offered.

THE REFEREE: No objection received.

CROSS EXAMINATION

BY MR. SHELDON:

Q Mr. Spitzmiller, it has been a few weeks since we last had a hearing on this matter and toward the end of the hearing on December 2nd you were discussing certain transactions that you and Mr. Robinson had with the bank and we were reviewing the ledger cards which have been marked Exhibits 10 A and 10 B in evidence. At that time in the course of the discussion it is my recollection that you had refused to grant Mr. Robinson a loan in July of '69, is that correct?

A I believe it was in July of 1969, yes, that is correct.

Q Thereafter, Mr. Spitzmiller, is it true from your own information that Mr. Max Yellen entered the picture and discussed the matter or had some talk

with Mr. Jim Oddy of the bank and thereafter the loan was granted by you to Mr. Robinson, is that correct?

A. Yes.

MR. SHELDON: Your Honor, I would like this marked for identification. It appears to be a file, I don't know how we can mark it unless we mark the entire file.

MR. GARDNER: I would consent to marking the entire file as Petitioner's Exhibit No. 4 if counsel desires I will stipulate it can be admitted into evidence as Exhibit No. 12 which would include on the right hand side eight sheets of paper and the left hand side of the file appears to be copies of financial information or data portions which are reproduced by photostat on M & T financial forms and I also stipulate the record was kept by the Manufacturers and Traders Trust Company in the ordinary course of their business and kept in the ordinary course in connection with loans to the bankrupt

Jack Robinson and further, that the papers on the right hand side contain a history of notes and appear to be the chronological notes of officers of the company concerning the bankrupt.

THE REFEREE: Do you wish to make that offer?

MR. SHELDON: Yes, on the basis of Mr. Gardner's stipulations.

THE REFEREE: It will be marked as Petitioner's Exhibit No. 12 in evidence.

(Whereupon, Petitioner's Exhibit No. 12 as described above was so marked and received in evidence.)

BY MR. SHELDON:

Q I show you what has been marked Petitioner's Exhibit No. 12 in evidence and ask you if you will tell the Court exactly what that is?

A. This is a credit file that we maintained in connection with the Robinson loan.

Q I show you a page, the pages are not numbered, I show you the fourth page on the right hand side

of the folder and ask you to read to the Court your memorandum of July 17th, 1969 with respect to this matter.

A "After visiting with Elmo J. Schifferle, Vice President and Zone Supervisor, today loaned the above an additional twelve thousand dollars bringing his total indebtedness to twenty-four thousand four hundred seventy-five dollars. Entire indebtedness is secured by security agreement dated July 16th, 1969 covering all equipment, inventory and accounts receivable. UCC-1 financing statements all properly filed. The additional twelve thousand dollars was extended to carry accounts receivable of Hickman, Coward and Wattles and Wardynski Sausage Company. Said note matures September 15th, 1969 and bears interest at the rate of 7½ per cent. We received from Mr. Robinson a 2 per cent accounts receivable service charge. Mr. Max Yellen visited at length with Mr. Oddy concerning this request and Mr. Oddy requested that we do whatever possible to make this accommodation. Card financial statement of Mr. Robinson on file."

Q Mr. Spitzmiller, do you recall the testimony on

December 2nd, 1971, that the bank granted a further loan after July 17th, 1969 to Mr. Robinson, is that correct?

A. Yes.

Q Was that loan granted in October of 1969?

A. Yes.

Q On the same sheet you just read from, is there a memorandum you dated October 10th, 1969 relative to the loan?

A. Yes.

Q Would you read that memorandum?

A. "After visiting with E. J. Schifferle, Vice President and Zone Supervisor, we today loaned the subject an additional eighteen thousand dollars secured by inventory and accounts receivable and due December 10th, 1969. This additional eighteen thousand dollars was consolidated with a previous note in the amount of eighty-five hundred dollars bringing the total note to twenty-six thousand five hundred dollars. We then discounted the new note for sixty-one days at a rate of 7½ per cent. Mr. Robinson anticipates repaying four thousand dollars on October 17th and forty-five hundred dollars on

December 10th, 1969. Terms of the note, however, govern. Mr. Robinson advises us that the proceeds of this loan are to be used for the purchase of inventory and to carry accounts receivable of Hickman, Coward and Wattles, Wardynski Sausage Company and Buffalo Butter and Egg Company. Mr. Robinson is a close friend of Max Yellen. See loan memo of 7-17-69."

Q Would you explain what the last portion of that memorandum was with respect to the fact that Mr. Robinson is a close friend of Max Yellen?

A It makes reference that he is a friend of Mr. Yellen's.

Q What would that have to do with the granting of the loan?

A Nothing in particular other than he is a friend of Mr. Yellen's.

Q You just don't put something in a credit memo history such as whom the friends of whom are, do you, there must be some reference?

A Quite often we do where we have a customer who is a friend or an associate of another good customer of our bank.

Q Would you have called Max Yellen on or before October 10th, 1969 with respect to this matter?

A No.

Q Would you have talked to Jim Oddy with respect to this matter before granting the loan?

A No.

Q In other words, the reference to Mr. Yellen is just made in your file for no reason at all?

A It only reminds of the memo of July 17th, 1969 and makes reference to it.

Q Mr. Spitzmiller, I show you what has been marked Exhibit 10 A and 10 B which appears to be ledger cards of the bank and ask you to advise the Court as to what appears to be the balance of the obligation as of November 17th, 1969, the last entry on the card?

A Nineteen thousand nine hundred and twenty-five dollars.

Q I would now show you Exhibit 10 B and ask you to refer to the first entry as of the same date?

A On that ledger card it is eighteen thousand dollars even.

Q What is the discrepancy and why?

A. There must be an additional ledger card showing the difference between the nineteen thousand nine hundred twenty-five dollars and the eighteen thousand even.

Q. Would the additional ledger card contain something of what appears to be at least twenty spaces on each side be completed in one day since November 17th is the opening day and November 17th is the closing date?

A. No.

Q. How would you explain the discrepancy?

A. If I may look at the notes that you have I believe there should be a note bearing the date of November 17th, 1969 which would show a balance of one thousand nine hundred and twenty-five dollars or for some reason they may be carrying one note on a separate ledger card.

Q. Are these the records you wanted?

A. No, if I might look at the notes themselves.

MR. SHELDON: I think to save time, your Honor, I will introduce the five notes in order that Mr. Spitzmiller can review them.

MR. GARDNER: Can we go off the record?

THE REFEREE: Off the record.

(Whereupon, off record conversation was held.)

THE REFEREE: Back on the record.

MR. GARDNER: Let the record show that counsel has stipulated that Exhibits 13 A through 13 E having been marked while we were off the record are received in evidence. That they are all promissory notes and Exhibit 13 A is dated October 10th, 1969, 13 B is dated November 3rd, 1969, Exhibit 13 C is dated November 25th, 1969, 13 D is dated November 28th, 1969 and 13 E is dated December 10th, 1969. Counsel also stipulate to the admission into evidence of Petitioner's Exhibit No. 14, a ledger card consisting of one sheet with dates running from November 17th, 1969 and through December 23rd, 1970 inclusive.

THE REFEREE: Exhibits 13 A through 13 E and Exhibit

No. 14 are now received and marked in evidence.

(Whereupon, Exhibits 13 A through 13 E and Exhibit 14 were so marked and received in evidence.)

BY MR. SHELDON:

Q I show you Exhibit No. 14 in evidence which purports to be a ledger card of the bank and ask you if this would be the other ledger card you referred to showing an opening balance on November 17th, 1969 of nineteen hundred and twenty-five dollars?

A. Yes.

Q What separate loan would that reflect?

A. I believe this represents a portion of the nineteen thousand nine hundred twenty-five dollars which is the 5 per cent added on the CPL which had a monthly payment of one hundred thirty-seven dollars and fifty cents each month.

Q Would that be the automobile loan?

A. I believe that is a loan which in part was secured by an automobile.

Q That was the only loan with the bank after November of 1969 that was to be at a fixed monthly rate, is that correct?

A That appears to be correct from these records you have given me.

Q After granting to Mr. Robinson the additional loan bringing the balance owed to the bank as of December 10th, of 1969 to thirty-five thousand dollars there was in fact an additional loan which showed indebtedness to the bank in excess of thirty-five thousand dollars, is that correct?

A His total indebtedness was in excess of thirty-five thousand dollars to the bank.

Q Mr. Spitzmiller, at the conclusion of the hearing on December 2nd, you testified that a loan was granted or renewed totaling obligations to the bank of twenty-six thousand five hundred dollars on or about October 10th of 1969, is that correct?

A Would you kindly repeat that figure?

Q Twenty-six thousand five hundred dollars.

A On October 10th the balance was twenty-eight thousand seven hundred dollars.

Q Mr. Spitzmiller, I show you Petitoner's Exhibit

3 A in evidence and ask you --

A. The note which we had at that time or placed on the books was for twenty-six thousand five hundred dollars. The reason the balance is in excess of that on this ledger card is because it includes other notes.

Q. So there were at least two notes at that time, is that correct?

A. Yes.

Q. I show you Petitioner's Exhibit 13 A and ask you if that is the twenty-six thousand five hundred dollar obligation?

A. It appears to be.

Q. Is there a stamp on the face of the note?

A. Yes.

Q. What does that stamp say?

A. Renewed.

Q. On direct examination by Mr. Gardner you testified as far as my recollection as to the fact that Mr. Robinson approached you in November of 1969 to obtain more funds from the bank, is that correct?

A. Yes.

Q. Could you advise the Court as to what type of

conversation took place in November of 1969 with respect to the granting of an additional loan by the bank to Mr. Robinson?

A. Mr. Robinson had requested additional funds and in particular had asked for a type of revolving credit or a line of credit whereby we could from time to time increase the amount which he owed to the bank and at his convenience reduce from time to time. The amount Mr. Robinson asked for would have brought his total obligations to the bank of in excess of thirty-five thousand dollars. I reviewed the matter with Mr. Schifferle and it was decided to approve the line of credit to Mr. Robinson in the amount of thirty-five thousand dollars. The proceeds of these loans were to be used for the purchase of inventory and/or the carrying of accounts receivable.

Q Did you ask Mr. Robinson in November of 1969 for a financial statement?

A. Yes.

Q Did you repeat the request prior to the execution of the documentation which you testified was on December 12th, 1969?

A. Yes.

Q. Even though no financial statement was submitted to you by Mr. Robinson either in November or prior to December 10th, 1969 you still granted Mr. Robinson a loan totaling twenty-five thousand dollars, is that correct?

A. Based upon our reviewing of the financial statement which we did have in the file and his promise to update our file with a more current financial statement we did extend the credit.

Q. In other words, Mr. Spitzmiller, you ask for a financial statement in order to make your records current and yet you were willing to grant a loan totaling thirty-five thousand dollars without receipt of the financial statement, a current financial statement, prior to the granting of the said loan, is that correct?

A. Our bank policy --

Q. I wish the Court would instruct the witness to answer the question.

MR. GARDNER: Can we pinpoint this as to time?

MR. SHELDON: Prior to December 10th, 1969 from November of 1969.

THE WITNESS: The answer is yes.

BY MR. SHELDON:

Q Mr. Spitzmiller, I show you Petitioner's Exhibit 13 E in evidence and ask you to describe to the Court the date and amount of that note.

A The date of the note is December 10th, 1969 and the amount is thirty-five thousand dollars.

Q Is there a stamp on the face of that note?

A Yes.

Q What does the stamp indicate?

A Paid December 12th, 1969.

Q At the time of the execution of the note of December 10th, 1969, the bank had nothing further in its file on Mr. Robinson other than that statement of April 25th or thereabouts of 1969, is that correct?

A The question is no other financial statements?

Q Yes.

A Yes.

Q Was there a credit record or a credit check made of Mr. Robinson at that time?

A No.

Q At the time of the execution of the said note on

December 10th, 1969, Mr. Spitzmiller, what conversation did you have with Mr. Robinson with respect to the execution of other documents?

A. On December 10th Mr. Robinson came to my office and informed me that he had an opportunity to make an advantageous purchase on that date and that he needed the money immediately. I informed him that in connection with our line of credit we were having documents prepared by our attorneys and that they would not be ready for a couple of more days. Because of the urgency which he stated that he needed the money I agreed to loan him the eighteen thousand dollars for three days for the purchase of inventory with the understanding that on December 12th he would return to my office and execute the documents necessary for the line of credit.

Q. Mr. Spitzmiller, I show you Petitioner's Exhibit 6 A through 6 D and ask you whether this is the package of documents which Mr. Robinson executed on the 12th?

A. They appear to be.

Q. Did you ever describe to Mr. Robinson on December

10th or prior to the execution, prior to the date of the execution that the thirty-five thousand dollar extension of credit was only for one year?

A. Yes.

Q When did you do that?

A. I believe it was at the time he originally asked for the line of credit or a revolving type of loan where you increase or decrease the amount.

Q This was a permanent type of decision, was it not, Mr. Spitzmiller?

A. All banks lines of credit run for the period of one year.

Q I show you Exhibit No. 6 and the loan agreement annexed thereto which is dated November 12th, 1969 and ask you where in that loan agreement it says the extension of the credit is only for one year?

A. It makes reference to it. It says said loan is made upon and subject to the terms and conditions of this agreement and the letter of credit which is shown as Exhibit No. 3.

Q Do you recall whether Mr. Robinson had seen the letter of credit at the time he executed that agreement?

A Yes.

Q Was it mailed to him?

A No, it was given to him in my office.

Q You are sure that the letter of credit was given to him before he signed the agreement?

A Yes.

Q Could it have been that you might have explained the letter of credit to him, but not given it to him prior to the signing of the agreement?

A I am relatively certain the letter of credit was given to him and explained to him before bringing him the loan agreement.

Q Are you certain as to the purpose of the loan of December 12th, 1969?

A Would you repeat that?

Q Are you certain as to the purpose of the loan as of December 12th, 1969?

MR. GARDNER: Your Honor, the question that counsel reads before had to do with the purpose of the loan made December 10th. I don't know if it is intentional, but the witness has been testifying as to what the purpose of the loan was that

was actually granted on the 10th. We all know there was no actual loan on December 12th, but merely a renewal of a three day loan.

MR. SHELDON: I object to the conclusion that Mr. Gardner has made. Number one, I have introduced the note in evidence dated December 10th, 1969 which shows the due date of December 12th, 1969, that is Exhibit No. 13 E.

MR.GARDNER: My objection is to the form of the question. It assumes facts that are not in evidence. The only purpose of the loan of December was stated by the people themselves. The only certainty which is the word counsel used in his own question, the only certainty, the witness has testified has to do with the purpose of the loan on December 10th.

MR. SHELDON: I will strike the word certainty.

THE REFEREE: Restate your question.

BY MR. SHELDON:

Q In the loan agreement of December 12th, 1969,

does it indicate the purpose of the loan?

A. Yes.

Q What does it say is the purpose of the loan?

A. On the first page. The proceeds of this loan are to be used solely for the purchase of inventory and the carrying of accounts receivable all in the normal course of the borrower's business.

Q Was there a loan on December 12th, 1969?

A. Yes.

Q What was the amount of the loan?

A. Thirty-five thousand dollars.

Q What did you do with the proceeds of the loan?

A. The proceeds were used to replace the note of December 10th which monies had been used for the purchase of inventory.

Q In other words, the proceeds of the loan of December 12th, 1969 were used to pay the note of December 10th, 1969, is that correct?

A. Yes.

Q Is there any reference in that loan agreement that a financial statement was produced prior to the granting of the loan of December 12th, 1969?

A. Yes.

Q What does it say?

A It says all financial statements, profit and loss statements and other statements of the borrower given to the trust company are true and correct and the borrower has full and complete title to the property listed in said financial statement.

Q Was there a financial statement given you before December 12th, 1969, but after your request of November of 1969?

A There was a statement prior to December 10th, 1969, but not after November of 1969.

Q What statement is the loan agreement referring to?

MR. GARDNER: I object, it calls for a conclusion of the witness. The document speaks for itself, it is argumentative.

MR. SHELDON: This agreement was prepared by the bank or the bank's attorney and not by the borrower or the borrower's attorney and as for it being a conclusion of the witness, this witness is the person who either prepared the documentation or was responsible for its preparation and I am asking as to

what financial statement it refers to when the agreement was drawn.

MR. GARDNER: The point is through the capability of counsel has become quite complex, but the issue is very simple. The testimony on the December 2nd examination, the testimony was one that he went over the given financial statement in the files with the borrower and verified that the information was up to date and the only thing brought out on cross examination is that he attempted to get a further financial statement, but that attempt was unsuccessful and the issue is that the loan is based on false information in the files of the bank. Whatever that document means, it was prepared by counsel and if he wants to bring the attorney in and ask him at least it would be a competent question although irrelevant.

THE REFEREE: I understand there was an earlier financial statement developed?

THE WITNESS: Yes.

THE REFEREE: It was sometime in advance of the December 10th or December 12th papers, but it was the financial statement that you testified that you had referred to?

THE WITNESS: Yes.

MR. GARDNER: I can't begin to list the basis for the objection, repetitious and it is a fact that the document speaks for itself and it calls for a conclusion of the witness.

THE REFEREE: I will overrule the objection. I think the record is that there is only one possible document and that is the financial statement that was tendered to the bank sometime in advance of the actual transaction, is that correct?

THE WITNESS: Yes.

BY MR. SHELDON:

Q Mr. Spitzmiller, I show you the letter which is attached or which is Exhibit No. 6 in evidence and ask you whether it says at any one point that the loan is due one year after the date of its granting?

A. It does not say that it is due in one year. It says the commitment expires December 11th, 1970.

Q As a hypothetical, Mr. Spitzmiller, if a loan had been reduced to ten thousand dollars one day before the so-called expiration of the line of credit and Mr. Robinson came in and asked for an additional twenty-five thousand dollars the day before the extension and all of the facts you have in the case have been known would it automatically have been granted?

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MR. GARDNER: Objection.

THE REFEREE: Sustained.

MR. SHELDON: I will withdraw it.

BY MR. SHELDON:

Q Mr. Spitzmiller, you testified on direct examination by Mr. Gardner that you reviewed the financial statement of April of 1969 with Mr. Robinson prior to the granting of the December 12th, 1969 loan, could you tell the Court on what day you reviewed that?

A We reviewed it in November and on December 10th and on December 12th.

Q It was your answer on direct examination that you

did not go over every figure, is that correct?

A. Yes.

Q. You went over the accounts receivable?

A. Yes.

Q. On all those occasions?

A. Yes.

Q. Is it your belief, Mr. Spitzmiller, over the period of time that Mr. Robinson did business with the bank that he did in fact have accounts receivable, is that your belief?

A. Yes.

Q. And you verified it from time to time that he did have accounts receivable, is that correct?

A. No.

Q. I show you Petitioner's Exhibit No. 3 A in evidence and ask you to read the note of June 1970.

A. "Attached is the financial statement of Jack Robinson dated May 25th, 1970. The statement shows current assets of sixty-four thousand nine hundred twenty-five dollars and current liabilities of thirty-six thousand one hundred dollars. The entire thirty-six thousand one hundred dollars is due the Delaware Office. We are advised that all

accounts receivable are good and collectible being due from Wardynski and Hickman, Coward and Wattles primarily. Please copy and return."

Q Had you verified those accounts at that time?

A Yes.

Q Did you verify those accounts at the time you made the memorandum?

A No, this information came from Mr. Robinson.

Q But it doesn't say in the memorandum that it did come from Mr. Robinson?

A It does not say so in the memorandum.

Q It says, "We are advised", doesn't it?

A That is what the memorandum states.

Q But it doesn't state by whom you were advised?

A No.

Q I show you Petitioner's Exhibit No. 8 in evidence which is the financial statement as of April 25th, 1969 and refers to the profit and loss account. You testified on direct examination that it was your understanding that the profit and loss accounts included the commissions that Mr. Robinson earned. Could you tell me on what line those commissions are reflected?

A. I believe it is on the line under title "Net sales" seventy-eight thousand two hundred dollars.

Q Did you come to any conclusion as to how that was included in that line?

A. That is purported to be his entire income for the ten month period ended April 30th, 1969, from all sources.

Q What does the first line of the profit and loss account say?

A. Sales gross for ten months ended April 30th, 1969.

Q Would gross sales include commissions?

A. It appears to in this statement.

Q In the normal financial statement, would it?

A. Often it would.

Q Where there is a mixture of goods sold and commissions would they be separately stated on a financial statement as far as the profit and loss account?

A. Not necessarily on this form. On a form prepared by a regular certified public accountant I would agree with you, yes.

Q What relationship would the cost of merchandise sold have to do with the gross sales if it include

the commissions of an unknown amount?

A. The thirty-five thousand five hundred dollars was the cost of Mr. Robinson's inventory from time to time. During the course of the year he claims to have spent thirty-five thousand five hundred dollars for inventory or over the ten month period at this time he owned inventory of twelve thousand five hundred dollars.

Q When you asked Mr. Robinson on December 10th and on December 12th of '69 as to certain numbers on the financial statement did you show him the financial statement?

A. I believe I did, but I am not sure.

Q Did you testify on direct examination, Mr. Spitzmiller, that in fact you held the financial statement in your lap or in front of you and Mr. Robinson was on the other side of the desk and asked you a couple questions with respect to certain numbers?

A. The financial statement was on my desk. I don't know whether he saw the statement or not.

Q Did he read the agreements at the time he executed them on December 12th, 1969?

A. He was given the documents, whether or not he read them, I don't know.

Q How long did he take before he signed them?

A. A few minutes.

Q Enough to read all of the documentation?

A. Certainly the first letter and most of the agreement and the financial statements we discussed them. Probably he did not have enough time to read the whole of the security agreement. We did discuss the contents of each agreement.

Q You discussed the contents. Would it be fair to say he didn't read them in their entirety?

A. Yes.

Q Mr. Spitzmiller, I refer to the petition of the Manufacturers and Traders Trust Company executed by you and dated June 7th, 1970. On Page 4 I refer you to questions marked E, F and G and ask you what is wrong with the answers to those questions.

MR. GARDNER: I object.

THE REFEREE: Sustained.

MR. SHELDON: This is a petition signed by Mr. Spitzmiller. These references to questions and answers given by Mr.

Robinson I believe he first made --

MR. GARDNER: This is merely "on file with the Court". Mr. Spitzmiller is not chargeable with the questions I ask and the answers given.

BY MR. SHELDON:

Q Mr. Spitzmiller, I refer you to Page 3 and ask you to read the two sentences starting with the words in each case?

A "In each case the questions set forth for the purpose of placing the answers in context. The answers is information alleged to have been given by Mr. Robinson falsely and fraudulently."

Q Did you sign that petition as an officer of the bank?

MR. GARDNER: I will stipulate for the record that Mr. Spitzmiller signed the petition in my presence and as an officer of the bank.

BY MR. SHELDON:

Q I now refer you to Page 4, the question thereon, and ask you if the answer to the question is false and fraudulent?

A. I believe it is incorrect. I believe he did well know what he was signing.

Q Did he read it?

A. I believe he read it. I can give you a piece of paper, hand it to you and whether or not you read it I don't know. I believe he read most of it. I explained it to him and discussed it.

Q Is most of it all of it, Mr. Spitzmiller?

A. No.

Q And you discussed it with him, is that correct?

A. Yes.

Q Are you really basing your conclusion on the fact that you discussed the agreement and the letter with Mr. Robinson rather than the fact that he read it?

A. Yes.

Q I then show you the question and say is that a fraudulent answer?

A. I believe so.

Q Well, you just got through testifying that you don't know for sure that he read all of the agreements, isn't that true?

A. Yes, and the answer said, "I didn't read it at all."

Q Now, do you know he read it?

A Mr. Robinson had been doing business with us for sometime and there is an assumption on my part that he did read it. He seemed to be a knowledgeable businessman. We gave him the papers and I certainly assumed he knew how to read.

Q Had you ever handed him some types of agreements like this before the loan agreement and the letter?

A No.

Q He had never signed other loan agreements, had he?

A Not with the M & T Bank.

Q Had he ever signed a letter dated December 12th, 1969 pertaining to the loan purpose agreement which is Exhibit No. 6 B in evidence?

A No.

Q How much time did he have to read the agreement which is 6 A in evidence known as the security agreement?

A A few minutes.

Q What is a few?

A Five, four.

Q As a matter of fact, Mr. Spitzmiller, isn't it true that you just laid the agreement on the table

after explaining what they purported to be to Mr. Robinson and asked him to sign?

A. No, sir. He looked them all over. I did ask him to sign and then he looked them all over and signed them.

Q. Did you ask Mr. Robinson on December 12th, prior to executing the agreement as to whether he had his financial statement that you had requested in November of '69?

A. I believe I did.

Q. What was his answer?

A. That he had been too busy and hadn't had time to prepare it.

Q. Mr. Spitzmiller, skipping along to January of 1971, you testified on direct examination that you had a meeting with Mr. Robinson at the early part of January, was that correct?

A. Yes.

Q. There was a question involved as to whether or not Mr. Robinson had indicated that he had certain accounts receivable at that time, is that correct?

A. Yes.

Q. Did you ask him whether he had accounts receivable

in January of '71 at your meeting with him?

A. Yes.

Q After he allegedly gave the list of accounts receivable, by the way, the list of accounts receivable, was that orally or in writing?

A. It was orally given to me.

Q Did you verify those accounts receivable, Mr. Spitzmiller?

A. Not at that time. He asked that we do not verify them.

Q Did you have a meeting then with Mr. Robinson and Mr. Pressman together with Mr. George Sheldon of the bank sometime thereafter?

A. Yes.

Q Do you recallthe date of that meeting?

A. I believe it was about January 6th.

MR. GARDNER: There are records available to the witness.

THE REFEREE: All right, would you furnish those to Mr. Spitzmiller.

THE WITNESS: The date was January 13th, 1971.

BY MR. SHELDON:

Q Do you recall being in the room on December 2nd,

1971 when Mr. Sheldon was testifying?

A Yes, sir.

Q Do you recall the questions asked of Mr. Sheldon and the answers from Mr. Sheldon with respect to the confirmation of the said accounts receivable?

A I believe I recall it.

Q In your memorandum of that meeting did you make reference to those accounts receivable?

A Yes.

Q What did you say with respect to the confirmation of same?

A Mr. Sheldon then he asked Mr. Robinson if he would be good enough to call anyone of the businesses owing him money so we could confirm the receivables. Mr. Robinson showed reluctance and did not feel he could do so at the moment.

Q Would you read the balance where you started with Mr. Sheldon, would you read the balance?

A Mr. Sheldon then advised Mr. Robinson that he had done some checking and found out we could not confirm any of the receivables.

MR. SHELDON: I would like this marked in evidence.

THE REFEREE: Mark it Petitioner's Exhibit No. 15 in

evidence.

(Whereupon, Petitioner's Exhibit No. 15 was so marked and received in evidence.)

BY MR. SHELDON:

Q. Mr. Spitzmiller, I show you what has been marked as Petitioner's Exhibit No. 15 in evidence, I show you the affidavit of Robert F. Spitzmiller shown to have been taken the 29th day of January, 1971 and ask you if that is your signature?

A. Yes, it is.

Q I refer you to Paragraph 9 of said exhibit and ask you if you will read your statement on Paragraph 9 to the Court beginning with subsequently in conversation?

A. "Subsequently in the conversation, however, after being presented with certain information by myself and Mr. Sheldon, Mr. Robinson was unable to confirm the existence of any accounts receivable payable directly to him. It also developed in the conversation that he had misrepresented to the trust

company during that conversation that no other indebtedness was owing to him."

Q Why is that a misrepresentation?

MR. GARDNER: Why is what a misrepresentation?

MR. SHELDON: Why is the statement that no other indebtednesses were owing to him a misrepresentation.

MR. GARDNER: I presume because it wasn't true.

MR. SHELDON: It wasn't true he had no other accounts receivable, Mr. Gardner?

THE REFEREE: Do you understand the question, Mr. Spitzmiller?

THE WITNESS: Yes, I believe I do. It is my understanding that it developed that Mr. Robinson was unable to confirm that there were any accounts receivable owing to him and that he had made misrepresentations to the trust company that in fact he did have accounts receivable which in fact he did not have.

BY MR. SHELDON:

Q Mr. Spitzmiller, is that what you said in your

affidavit?

A. That was my understanding.

Q. Is that what you said in your affidavit, Mr. Spitzmiller, that he misrepresented that he had accounts receivable?

A. He misrepresented the trust company. It developed in that conversation that no other indebtednesses were owing to him.

Q. Why is that a misrepresentation if he didn't have any accounts receivable?

A. It was my understanding that he had told us there were accounts receivable and now there were not.

MR. SHELDON: Your Honor, that is not responsive to the question.

MR. GARDNER: May we go off the record?

THE REFEREE: Off the record.

(Whereupon, off the record conversation was held.)

MR. GARDNER: Back on the record.

BY MR. SHELDON:

Q. Mr. Spitzmiller, the last sentence of Paragraph 9

says that Mr. Robinson misrepresented to the trust company during that conversation that no other indebtednesses were owing to him, is that what it says?

A. Yes.

Q And in fact he stated that he had no accounts receivable, is that correct?

A. He did not say he did not have accounts receivable.

Q I call your attention to Paragraph 8 and ask you for the purpose of saving time to read that portion of the paragraph which starts the list included.

A. "The list included nine account debtors, with total balances as of January 11th, 1970, (according to Mr. Robinson at that time) in the amount of fifty-one thousand six hundred dollars. He advised me at the time that the accounts payable were owing but not to be paid all at the same time, although he anticipated receiving at least partial payments within a few days. Certain other conversations took place between us and I requested that he meet again with me and George W. Sheldon, another officer of the trust company."

Q In your reference in Paragraph 8 which you just

referred to you refer to a list of account debtors as of January 11th, 1970, a year before the meeting, is that correct?

A. I believe that is a typographical error.

Q. This is another typographical error of the bank, is that correct?

MR. GARDNER: I stipulate it is an error.

BY MR. SHELDON:

Q. Mr. Spitzmiller, on what arrangements did you base the commitmency of seven hundred dollars for the thirty-five thousand dollar loan?

MR. GARDNER: I assume the question is directed to this particular loan and this particular commitmency?

MR. SHELDON: That is correct.

THE WITNESS: The fee is one which is negotiated satisfactorily to both the borrower and the bank where the proceeds of the loan are to be used for the carrying of inventory and accounts receivable.

BY MR. SHELDON:

Q. Is the seven hundred dollar figure in this situation 2 per cent of the note amount?

A. No, sir. It represents a fee negotiated in connection with a line of commitment or a letter of commitment of thirty-five thousand dollars.

Q And it has no relation to the amount of the loan?

A. Not of the loan dated December 10th or 12th, but rather the commitment for the period of a year.

MR. SHELDON: I have no further questions of this witness.

REDIRECT EXAMINATION

BY MR. GARDNER:

Q Mr. Spitzmiller, I show you Exhibit No. 15 introduced by Mr. Donald Sheldon and I call your attention to Paragraph 8. The date January 11th, 1970, that we refer to as an error, is that the same date which appears on one of the other exhibits I believe 3 A, is that not correct?

A. Yes, it is 3 A, the memorandum.

Q Exhibit 3 A referred to that incorrectly as 1970 and that has been testified to before?

A. Yes.

Q Apparently that year was carried forward by whoever actually physically prepared that affidavit?

A Yes.

Q I gather you did not catch the error when you signed the affidavit?

A I did not.

Q Referring to Paragraph 9 on the same page, the last sentence on that paragraph you previously and I quote talked about certain misrepresentations regarding this conversation and I quote that no other indebtednesses were owing to him." Did Mr. Robinson in that conversation between yourself and Mr. Sheldon and Mr. Pressman make any representation that other indebtednesses were owing to him were previously referred to, do you recall?

A I don't recall.

Q Is it correct if he made such representations or statements you would not consider that a misrepresentation?

A Yes.

Q Have you ever had any information indicating that Mr. Robinson understated the number of account debtors who owed him money?

A No.

Q If anything, he overstated the number of people

owing him money, is that correct?

A. That he overstated?

Q Yes.

A. I felt that he tried to fairly tell us what was owed him.

Q Let me state the question as follows. You had a list of account debtors which you had gotten from him?

A. Yes.

Q You were unable to verify that these people in fact owed him any money at all, is that correct?

A. Yes.

Q Do you have any information at this time which would confirm that these people did in fact owe money as of January of this year?

A. No.

Q Is it not true in fact that this last sentence in Paragraph 9 was supposed to refer not to debts owing to Mr. Robinson, but debts owing by Mr. Robinson to other people?

A. Yes.

Q Was there a conversation at this time about what indebtedness was owing by Mr. Robinson to others

except the M & T Bank?

A. Yes.

Q What was Mr. Robinson's initial response to that question?

A. That he had no other debts other than to M & T.

Q Did he subsequently change that answer upon prompting from Mr. Pressman, his attorney?

A. Yes.

Q And what was his revised answer?

A. That he had a mortgage on his home.

Q Did there subsequently occur any other further conversations regarding account debts owing as a result of Mr. Sheldon indicating some belief that some other debts were owed?

A. Yes.

MR. SHELDON: What Mr. Sheldon are you referring to?

MR. GARDNER: Mr. George Sheldon.

BY MR. GARDNER:

Q Did Mr. George Sheldon refer that there were other debts owing?

A. Yes.

Q I show you Exhibit No. 3 B just to pin that down, do you see that reference to the question by Mr.

Sheldon directed to Mr. Robinson as to whether he would be good enough to call anyone of the businesses owing him money so that we could confirm the receivables and that Mr. Robinson showed reluctance and did not feel he could do it at that moment, do you see that?

A. Yes.

Q. It is clear that that is contrary to the words of the last sentence of Paragraph 9 in Exhibit No. 15 that the last words, and I quote, "to him" should have been "by him", is that correct?

A. Yes.

Q. Is it fair to say this is an error you did not catch at the time you signed this affidavit?

A. Yes.

Q. Who prepared this affidavit?

A. Your office.

Q. In fact, were you not advised that I personally dictated and prepared that affidavit?

A. Yes.

Q. By the way, when I prepared that affidavit, to your knowledge, did I have in my possession Exhibit 3 A in evidence?

A. Yes.

Q In response to a question from Mr. Donald Sheldon you indicated that it was an assumption on your part that Mr. Robinson read the papers he had before him in December of 1969. You also indicated that there was a period of time which you estimated to be five or four minutes during which Mr. Robinson had to look at those papers. Were you present during that entire period?

A. Yes.

Q Did you observe what Mr. Robinson was doing?

A. Yes.

Q Were this eyes open or shut?

A. Open.

Q Were they directed in the direction of the papers that he had in his hands, were they in front of him?

A. Yes.

Q Was he looking at the papers?

A. Yes.

Q Did he turn the pages as if he was going through the papers?

A. Yes.

Q Was there any conversation going on while he was

going through these fiscal accounts or motions that you can recall?

A. I don't recall.

Q. Without knowing whether his mind was actually functioning did he appear to be reading the papers?

A. Yes.

Q. Did he ask you any questions about the papers as he went through them, that you can recall?

A. I don't recall.

Q. Counsel has been inquiring regarding the commitmency of seven hundred dollars. Is it customary for a bank to negotiate a commitmency for an extension of a substantial line of credit?

A. Yes.

Q. Can you state what the reason is or the justification for such a commitmency?

A. The primary reasoning is with a line of credit the bank must have available at all times the amount to the full extent of the line of credit charges being extended. A gentleman or a businessman you see can have a zero balance nine or ten months or even eleven months out of the year, yet we must have available the full amount of the line of credit.

Q You are a lending authority, a commercial trust company, that is what your bank is?

A. Yes.

Q As a lending authority you are strictly limited by federal and state banking laws?

A. Yes.

Q On your books when you open a line of credit such as this, is it not a fact you are committed to those dollars even though they are not out and actually earning interest?

A. Yes.

Q Although Mr. Robinson borrowed money on December 10th and borrowed money to replace the money on December 12th he was free to repay that at any time?

A. Yes.

Q Is it not also true in connection with the papers to put the loans on you had to incur legal expenses with your own attorneys?

A. Yes.

Q And the commitment fee would partially compensate you for that, is that correct?

A. Yes.

Q You made reference in your history notes I believe in the credit file which is Exhibit No. 12 to the fact that Mr. Robinson was a friend of Mr. Yellen's, do you recall that?

A. Yes.

Q For what purpose is the credit file maintained, can you tell us that?

A. Primarily a vehicle to provide continuity within the bank. To provide the history of a loan and the activities on the loan so that in the event one of the loan officers may be absent or transferred by going down the memorandum you can follow the history of the loan as it has been handled at the bank.

Q Is there any limit as to the type of information that might be included in this file?

A. No.

Q Is it a fair statement that anything which is deemed significant to be known by the bank officer in dealing with a customer might be included in this file?

A. Yes.

Q As a bank officer, would it be in your judgment

significant to know any close personal or business relationships between one of your customers and another of your customers?

A Yes.

Q Why?

A At some point we would like to perhaps make an inquiry from one customer to another. Not necessarily specifically about this loan, but just as a general information you might ask if he had seen this subject in town lately, have you heard from him or how he is doing and things such as that.

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Q So that in connection with keeping track of customers and the status of your loan you obtain information periodically from such sources as seem reasonable and available to you in that connection, is that correct?

A. Yes.

Q And the fact that Mr. Yellen is a close friend of Mr. Robinson's and would have some knowledge about him, that is a fact you would want to keep track of?

A Yes.

Q I show you an entry in Petitioner's Exhibit No. 12 under the date of December 21st, 1966 which appears to be on a form type of insert memo headed by the form words and I quote additional services discussed, close quotes, with the form word, and I quote comments, close quotes. Is that the type of standard form which is used or has been used in the past by the bank?

A It was used in the past.

Q What type of insert memo is that?

A This particular one was addressed to the branch sales department. At that time they were having, this memo was not written by me, they were trying to keep track at our sales marketing department that we were calling on customers and we were discussing bank business.

Q In other words, at least during some period in back history wasn't there some effort to make sure that the bank officers were doing business promotion in an effective way?

A Yes.

Q Was this not recited or recorded by an officer who made such a contact by putting this memorandum

in the credit folder?

A. Yes.

Q As a matter of fact, as a branch officer at that time, you sort of had to do that to keep up with your quota, is that correct?

A. Yes.

Q So credit files would contain miscellaneous information of this sort that might not relate to an existing loan specifically?

A. Yes.

MR. GARDNER: That is all I have.

RECROSS EXAMINATION

BY MR. SHELDON:

Q Mr. Spitzmiller, on the affidavit to the attached order to show cause in the State Supreme Court action did you read that before signing?

A. Yes.

Q In your comments on Petitioner's Exhibit No. 3 B, Mr. Gardner in his redirect examination indicated that you used the word reluctantly, did Mr. Robinson use that word?

A. I do not recall.

Q The phrase Mr. Robinson showed reluctance is your conclusion, is it not, Mr. Spitzmiller?

A. Yes.

Q Is there any place in your business records that indicates Mr. Robinson had a business relationship with Mr. Yellen?

A. I don't believe that he had a business relationship with Mr. Yellen.

Q Do you know Mr. Yellen personally?

A. No.

Q Did you ever hear of him?

A. Yes.

Q Is he a shareholder of the bank as far as you know?

A. I do not know.

Q Did you attend the annual meeting of the bank this past year?

A. No.

Q Did you see the proxy statements?

A. Yes.

Q Was Mr. Yellen listed on that proxy statement as one of the three persons appointed to cast a vote on proxy?

A. I don't recall.

Q. If I said that Mr. Max Yellen was named as one of the three persons on that statement to cast a vote of proxy would you disagree with me?

A. No.

MR. SHELDON: I have no further questions.

MR. GARDNER: I have no further questions. The Petitioner rests.

THE REFEREE: Do you wish to address any motions and do you want those motions on the record?

MR. GARDNER: The motions are up to counsel, I have no choice. Can we go off the record for a moment?

THE REFEREE: Off the record.

(Whereupon, off the record conversation was held.)

MR. SHELDON: Back on the record. Your Honor, there are four motions to dismiss. One is with respect to the third objection to dismiss the charge, that being the

bankrupt borrowed certain money from the Beneficial Finance Corporation, a portion of which monies were used to pay interest on business obligations. I ask that grounds be dismissed on the grounds that there has been no prima facie case established with respect to that matter.

THE REFEREE: Just a moment, let me take those in turn. Mr. Gardner, I don't recall anything with respect to Beneficial Finance.

MR. GARDNER: The only proof that we have and whether it is weak or strong is something I will leave to the Court to decide. It is the testimony of the bankrupt himself on the transcript of the first meeting. If the Court finds that insufficient the motion should be granted. I would suggest that it would be deferred for ruling at the end of the case.

THE REFEREE: Are there any other exhibits that would indicate what the statement itself was

to Beneficial or inquiries about that statement?

MR. GARDNER: Just inquiries about that statement that counsel for Beneficial made at the time. I believe everything was set out in the record.

THE REFEREE: So the written statement itself is not a part of this record, is that correct?

MR. GARDNER: That is correct, your Honor.

THE REFEREE: Mr. Sheldon, on what page does the third charge appear?

MR. SHELDON: It starts on Page 11, Paragraph 13.

THE REFEREE: With respect to that motion, I will grant the motion, Mr. Sheldon.

MR. SHELDON: The second motion, your Honor, is a motion to dismiss as to grounds that the bankrupt has admitted an offense under 18 US Code Section 152. I move that this grounds be dismissed on the basis that a prima facie case has not been established that any false oath or false testimony had any relation at all to the material matter in this

proceeding. And I reserve the right to either present oral or written argument with respect to that motion.

The third and fourth motion I make together. One is the objection to the discharge based on Section 14 and the second on the basis of the determination of dischargability under Section 17 C (2) of the Bankruptcy Act. Both pertaining to alleged false financial statements. It is my motion that a motion to dismiss the objection to this discharge. The petition to determine dischargability should be granted on the basis that the creditor has not established a prima facie case with respect thereto. In that it has not shown that in fact that it relied on said statement in order to loan the money. There is no testimony, I don't want to get into that because of the length, but the testimony in brief indicates that Mr. Robinson had done

business with the bank for many, many years and always handled his affairs as agreed.

Further, it is obvious from the memorandum of the bank that after receiving a loan and on various occasions thereafter the loan was granted basically because Mr. Max Yellen's name entered the picture. That further, a financial statement had been requested by the bank prior to the granting of the loan which showed that they were not relying upon the prior financial statement whatsoever and then the bank for whatever reason it had granted a loan without obtaining the financial statement. I don't think the variance between Section 14 and 17 C (2) is relevant in that an oral misrepresentation of any consequence was not shown by the testimony of the creditor's witnesses. I reserve again the right to enlarge on all arguments either

oral or in writing at the proper time.

THE REFEREE: Do you wish to waive your argument or motion or do you wish to comment briefly?

MR. GARDNER: For the record, I respectfully take an exception to the granting of the first motion. I also reserve my right to pursue further argument at a later time.

THE REFEREE: With respect to the last two motions, Section 14 (c) of the Act and Section 17 C (2) of the Act we reserve decision or those two. With respect to the second motion that is relating to the grounds of a false oath under Section 152 of the Act I do find reasonable grounds for believing that the bankrupt has committed acts which would prevent his discharge with respect to a number of responses.

Now, those are outlined, gentlemen. A through I in the specifications of objections. I find reasonable grounds

have been established with respect to the following: I, J, K, L, M, O, P, Q, R, S, T and U. With respect to the remaining I will reserve decision.

MR. GARDNER: For the record, do I understand that the motion is denied insofar as the specific alleged false oaths which have been itemized are concerned, but as to the sub-letters you have not itemized you are reserving decision on the motion?

THE REFEREE: That is correct. Further, I want to alert Mr. Sheldon particularly since the burden does switch under Section 14 once a finding is made and that was my purpose for enumerating those in detail.

Right now we will take a ten minute recess.

(Whereupon, a brief recess was taken. During recess it was agreed to adjourn the proceeding until Thursday, December 23rd, 1971 at 9:00 A.M.)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

* *

In the Matter

of

JACK ROBINSON in Bankruptcy

Bankrupt No.
BK-71-376

* *

Proceedings held before REFEREE BERYL E. McGUIRE at 308 United States Courthouse, Buffalo, New York, on December 23, 1971.

APPEARANCES:

Messrs. CHIRLIN & SHELDON,
1565 Statler Hilton Hotel,
Buffalo, New York,
Attorneys for the Bankrupt;
DONALD P. SHELDON, Esq., of counsel.

Messrs. HODGSON, RUSS, ANDREWS,
WOODS & GOODYEAR,
One M & T Plaza,
Buffalo, New York,
Attorneys for the M & T Trust Company;
WILLIAM H. GARDNER, Esq. of counsel.

INDEX

WITNESS

	Dr.	Cr.	Redr.	Recr.
Jack Robinson	7	53	89	

EXHIBITS

For the Petitioner:		Ident.	Evid.
Ex. #16	A Check to M & T from Jack Robinson dated December 12, 1969 Check No. 1456 in amount of $700.		5
Ex. #17A thru #17M	Promisory Notes from March 27, 1968 to September 18, 1969.		5
Ex. #18A thru #18K	Invoices from November 25, 1969 to December 12, 1969.		5
Ex. #19A thru #19H	Invoices from February 5,1970 to August 3, 1970.		6
Ex. #20	"Individual Financial Statement" dated 11-25-65.	85	90

THE COURT: Gentlemen, you may proceed.

MR. GARDNER: Your Honor, this is a continuation of the hearing in connection with the objections to discharge on Jack Robinson.

Before Mr. Sheldong resumes examination may I state for the record that prior to Court we have caused to be marked certain exhibits which I will identify as follows. Exhibit 16 is a check of Jack Robinson payable to the Trust Company in the amount of $700. dated December 12, 1969 bearing check number 1456. Exhibit 17A through 17M inclusive are various promisory notes signed by Mr. Robinson from time to time and given to M & T Trust Company. The notes appear to cover the period from March 27, 1968 which is the earliest date to September 13, 1969 which appears to be the latest date. These notes are all canceled in one way or another and came from

Mr. Robinson's records. Exhibits 18A through 18K are invoices issued under the printed letterhead of Jack Robinson Meat Specialties covering various time dates in the year 1969, the earliest date appearing to be November 25, 1969 and the latest date December 12, 1969. Exhibits 19A through 19H are similar invoices issued at various times during the year 1970, the earliest date being February 5, 1970 and the latest date being August 3, 1970. On the invoices particularly Exhibit 18 there are in various papers documentation attache in the nature of bills of lading or things of that sort. There are fewer of those types of documents on exhibit 19. These exhibits have been produced by Mr. Robinson and are offered by Mr. Robinson in support of his defense. By stipulation they are admitted in evidence as being authentic. The

Trust Company, however, does not concede the relevancy to the proceeding but leaves that to the Court on the final determination of the issues.

THE COURT: All right. Then Exhibits 16 through 19 and their various parts are received in evidence.

(Whereupon, a Check to Manufacturers & Traders Trust Company from Jack Robinson, bearing date of December 12, 1969, Check No. 1456 in the amount of $700, was then marked Exhibit No. 16 and received in evidence by stipulation.)

(Whereupon, a group of documents purporting to be Promisory Notes from March 27, 1968 to September 18, 1969 was then marked Exhibits 17A through 17M respectively and received in evidence by stipulation.)

(Whereupon, a group of documents purporting to be Invoices from November

25, 1969 to December 12, 1969 was then marked Exhibit 18A through 18K and received in evidence by stipulation.

(Whereupon, a group of documents purporting to be Invoices from February 5, 1970 to August 3, 1970 was then marked Exhibit 19A through 19H and received in evidence by stipulation.)

THE COURT: Do you wish to call Mr. Robinson this morning?

MR. SHELDON: Yes.

THE COURT: Was Mr. Robinson previously sworn in this hearing?

MR. SHELDON: No, he has not been.

J A C K R O B I N S O N (34 Carpenter Avenue, Buffalo, New York), having been first duly called and sworn as a witness, testified as follows:

THE COURT: You may ask, Mr. Sheldon.

DIRECT EXAMINATION BY MR. SHELDON:

Q. Mr. Robinson, how old are you?

A. 48.

Q. And where were you born?

A. In Poland.

Q. And do you recall the community in Poland that you lived in your early days?

A. Yes, I do.

Q. And what community was that?

A. Wilno.

Q. Did you go to school in Wilno?

A. Yes.

Q. And in the European system of education how far would you have gone, how many years did you go to school?

A. I would say about seven, eight years.

Q. And was that all in Wilno?

A. Yes.

Q. And at the time that you finished those seven or eight

years of your education what year would that have been approximately, if you recall?

A. That was just before the second World War.

Q. And did you go on to further education?

A. No.

Q. In Wilno after that?

A. No. It was interrupted because of the war.

Q. And what happened at that point, where did you go?

A. Well, I was sent to a concentration camp.

Q. And what concentration camp were you sent to?

A. Dachau.

Q. And how many years did you spend in that concentration camp?

A. I would say most of the time of the second World War.

Q. Did you have any education in the concentration camp?

A. No. No education at all.

Q. Did you have any schooling at all?

A. No.

Q. What language did you speak at that time?

A. At that time Polish.

Q. Any other language?

A. And a little bit of German.

Q. Did you at any time from your early education until the

time that you were in the concentration camp have any knowledge of English whatsoever?

A. No.

Q. And did there come a time when you were released from the concentration camp?

A. Yes.

Q. And how did that happen?

A. Right after the Americans got in in 1945.

Q. And where did you go after you were released?

A. I was sent to Austria in a camp there.

Q. How long did you spend in Austria?

A. I would say about a year.

Q. Did you have any schooling in Austria?

A. No, I didn't.

Q. Where did you go after you were in Austria?

A. From Austria I went to France.

Q. And did you have any schooling in France?

A. No, I didn't.

Q. At any time then until you got to France did you ever have any education in the English language at all?

A. No, I didn't.

Q. You understand what I mean?

A. Yes.

Q. And how much time did you spend in France?
A. About a year and a half.
Q. Then what happened?
A. I was waiting to get my papers to come to the States.
Q. Did you have to have an English education or a knowledge of the English language in order to come to the United States, so far as you know?
A. No.
Q. Did you come to the United States?
A. Yes, I did.
Q. What year was that?
A. It was in 1949.
Q. And where did you settle in the United States? Do you understand what I mean by settle? When you got to the United States -- When you arrived in the United States what port did you arrive at?
A. In New York.
Q. And did you then stay in New York?
A. For a while, yes.
Q. What is a while?
A. Oh, about three months I would say.
Q. And where did you go after that?
A. After that I went to Buffalo.

Q. While in New York City did you work?

A. Yes, I did.

Q. Where did you work?

A. I was working in a factory as a clerk there. Helping out in the shipping department.

Q. You were a shipping clerk, would that be --

A. Well, not quite, but --

Q. Well, were you packing boxes?

A. Yes.

Q. Did you know English at all at that time?

A. Not -- Just a little I would say, but not too much at all.

Q. Did you pick up English from working with the people?

A. Yes, in the plant as I was going along.

Q. Now, did you apply for citizenship sometime after 1949, Mr. Robinson?

A. Yes.

Q. When was that?

A. It was in 1953 or 1954.

Q. Were you married at that time?

A. Yes.

Q. Did you have to take some examinations?

A. Yes.

Q. For citizenship?
A. Yes.
Q. By that time could you read some English?
A. Well, not quite well but my wife helped me.
Q. And she tutored you?
A. Yes.
Q. Do you understand what I mean by tutor? Did she help you learn the language a little bit?
A. Yes.
Q. Since you came to the United States, Mr. Robinson, have you had any formal schooling whatsoever?
A. No, I didn't.
Q. You have never gone to any schooling in the United States at all?
A. No.
Q. You read the newspaper?
A. A little.
Q. Do you understand what you read?
A. Not quite.
Q. You understand part of what you read?
A. Part of it, yes, I would say.
Q. Now, how long have you been in the meat business as a commissioned salesman for this New York Commodities?

A. I would say late of 1952.

Q. In other words, all the time you have been in Buffalo you have been working for New York Commodities as a commission salesman?

A. Yes.

Q. You did not work on salary, did you?

A. No, I didn't.

Q. Straight commission?

A. Straight commission.

Q. And did you also from time to time sell some products from others other than New York Commodities?

A. I don't quite understand, Mr. Sheldon.

Q. Sometimes did you in this period from 1952 to the present time would there be some times that you had sold products that were not distributed by New York Commodities?

A. Yes, I did.

Q. And who would you buy those products from?

A. From various customers.

Q. When you say "customers", do you mean people that you have sold goods to?

A. Yes.

Q. And do you recall, Mr. Robinson, when you first started to deal with the Manufacturers and Traders Trust Company?

A. I believe it was in 1965, 1966.
Q. And at what office were you dealing?
A. At the -- First I think it was, if I'm not mistaken, the Central Park Office on Main and Filmore.
Q. And did you borrow any money from the bank at that time?
A. Yes, I did.
Q. And did you have your accounts at the Manufacturers and Traders Trust Company?
A. Yes, I did.
Q. Would they have been at that same office that you had been dealing with, the Central Park Office in 1965, 1966?
A. Yes.
Q. Now, did there come a time when you transferred your accounts to some other office of the Manufacturers and Traders Trust Company?
A. Yes.
Q. And when was that?
A. I believe it was in 1967, late '66.
Q. And what office was that that you --
A. The Delaware-Chippewa Office.
Q. Do you recall who the manager of that office was at that time?
A. Yes.

Q. Who was that?
A. Mr. Tom Licata.
Q. Tom Licata?
A. Yes.
Q. Is he still at the Delaware Office, so far as you know?
A. So far as I know, he's not anymore there.
Q. Now, Mr. Robinson, how did it come about that you changed from the Central Park Office to the Delaware-Chippewa Office?
A. Because the manager was transferred from Central Park to the Delaware-Chippewa Office and he transferred my accounts automatically there.
Q. And was that Mr. Licata?
A. Yes.
Q. He had been the manager of the Central Park Office before?
A. Yes.
Q. Had you known Mr. Licata before dealing with the bank?
A. No, I didn't.
Q. During the period that Mr. Licata was the manager of the Central Park Office and the Delaware office did you talk with him quite often?
A. Yes, I did.
Q. And did you talk to him about your business?

A. Yes.

Q. And was he the one who always took care of you on your loans?

A. Yes, he did.

Q. Did he ever ask you for a financial statement at the time you originally went to him, so far as you can remember, in 1965 or 1966, if you can remember?

A. Yes, I think he did mention that he was asking me for one.

Q. Did he give you any forms, so far as you recall?

A. Well, so far as I recall I think he gave me a form, and he came to my house and he filled out - it showed in his own writing on the form I believe it was 1965 or '66 how to make out a statement.

Q. And did he come to your house during the week or on a weekend?

A. It was on a weekend.

Q. And do you recall whether it was a Saturday or a Sunday?

A. I believe it was a Sunday.

Q. Did he come by himself or with his family?

A. With his family.

Q. Had you become fairly familiar with him?

A. Yes.

Q. And were there occasions when you would be out with him socially?

A. Yes, there was a few occasions.

Q. At the time that he was over your house was he filling out that statement for you?

A. Yes, he did.

Q. Did he try to explain how you obtain the numbers, and so on?

A. He put it in himself, and he said, "This is the way it should be filled out, the statement.".

Q. Would you say that Mr. Licata knew quite a bit about your affairs?

MR. GARDNER: Objection.

THE COURT: Sustained.

BY MR. SHELDON:

Q. Did you tell Mr. Licata about your business dealings, and so on?

A. Yes, he knew.

Q. And had you discussed with him on various occasions any debts that you might have had with other people from time to time?

A. No.

Q. Well, at the time that he was over your house did you tell him that you owed other monies besides those to the bank?

A. Yes, I did mention it to him.

Q. That was in 1965 or 1966?
A. Yes, somewhere around there.
Q. And what debt was that that you discussed?
A. I think I discussed some of the loans I had with the East Buffalo Credit Union.
Q. And those were long standing loans with the Credit Union?
A. Yes.
Q. And did Mr. Licata ask you, so far as you can recall, and I understand it is a number of years ago, did he ask you, if you can recall and if you can't say you can't, whether or not you had other debts besides Manufacturers and Traders Trust Company?
A. I believe so.
Q. Do you recall that you told him that you owed money to the East Buffalo Credit Union?
A. Yes.
Q. "Yes" you recall, or you did tell him?
A. I think I did tell him that, yes.
Q. Can you recall what he said at that time about other debts?
A. I believe he said it doesn't matter at all, that it doesn't have to be filled in in the statement.
Q. Did East Buffalo have a mortgage on your house at that time
A. Not at that time.

Q. Now, during the period of time that Mr. Licata was at the Delaware Office did you borrow money from the M & T Trust Company?

A. Yes, I did.

Q. Mr. Robinson, I show you Exhibit 17E through L inclusive, which are promisory notes to the Manufacturers and Traders Trust Company, and ask you if you would look through those notes and see if those are your signatures?

A. Yes, they are.

Q. And is there a marking below or to the side of your signature on most of these notes?

A. Yes, there is.

Q. And do you recall whose marking that is?

A. I believe this is Tom Licata's.

Q. Now, did there come a time, Mr. Robinson, so far as you can recall, when Mr. Licata was no longer at the Delaware Office of the Bank?

A. Yes.

Q. And have you any recollection as to when he left?

A. I think it was in 1969, April, May, if I'm not mistaken.

Q. In the spring of 1969, late spring?

A. Yes.

Q. And do you recall who took over his position?

A. Mr. Bob Spitzmiller.

Q. And was Mr. Spitzmiller at the office of the bank for a period of time when Mr. Licata was still there, so far as you can recall?

A. Not that I recall.

Q. Incidently, Mr. Robinson, did you appear at the bank office quite often?

A. Yes. I was making my payments, interest.

Q. Did you also make deposits?

A. Yes, I did.

Q. And did you have a safe deposit box at that office?

A. Yes, I did.

Q. How often would you say on a weekly basis that you appeared at that bank office?

A. On a weekly basis?

Q. Yes.

A. I would say sometimes twice a month.

Q. Twice a month?

A. Yes.

Q. And when you went into the bank would you have seen Mr. Licata usually?

A. Yes.

Q. Did you see him when you went in just to make a deposit?

A. Sometimes.

Q. And did you make a deposit only twice a month?

A. Sometimes.

Q. Would there be some occasions when you made more?

A. Yes, there were some occasions that I made more.

Q. Would there ever be occasions when you were at the bank at least once a week?

A. Not that I recall.

Q. Now, do you recall how you met Mr. Spitzmiller?

A. I believe Mr. Licata mentioned to me that he has taken over the Delaware Branch, and at anytime I walk in there I could introduce myself, and I think that's as far as it went.

Q. And then at one time you came into the bank and introduced yourself to Mr. Spitzmiller?

A. Right.

Q. Mr. Robinson, do you recall when you first met Mr. Spitzmiller, if you recall?

A. I imagine it was 1969, sometime in the summertime.

Q. 1969?

A. Yes. I think so.

Q. And what was the first time, if you can remember that, on what kind of an occasion did you meet Mr. Spitzmiller?

A. I imagine I made a deposit at that time in the bank and I went over to him and I introduced myself and we talked about the nature of my business, and so on, and so forth.

Q. Did you ask for a loan the first time you met him?

A. I think I did, yes.

Q. And in what month would that have been, so far as you can recall?

A., I would say it was in the summertime, June, July, around there.

Q. Of 1969?

A. Yes.

Q. And do you recall whether he gave you the loan?

A. I believe he said that he couldn't give me the loan, that there was a big amount outstanding, that he couldn't do nothing for me, I believe that's the way it was his saying at the time.

Q. And what did you do after that?

A. I went to see Mr. Yellen and I asked him if he could try to help me that I need some additional money.

Q. How did you know Mr. Yellen?

A. I know Mr. Yellen through the school. He was on --

Q. Is this the school where your children attended?

A. Right.

Q. And is Mr. Yellen active in that school?

A. Very active.

Q. And do you recall what Mr. Yellen told you when you went to see him?

A. He said that he'll try to do his best.

Q. Why did you happen to go to Mr. Yellen?

A. Because I understood at that time that Mr. Yellen is quite an influencial - is quite influencial at the M & T.

Q. And did there come a time thereafter when the loan was granted?

A. Yes.

Q. Now, Mr. Robinson, in your dealings with the Manufacturers and Traders Trust Company did you always try to make your payments on time?

A. Yes, I did.

Q. And did you have from time to time more than one loan outstanding?

A. Yes, I did.

Q. And would you be paying on one or two or three different loans at the same time?

A. Yes.

Q. All at the Manufacturers and Traders Trust Company?

A. Yes.

Q. All with the Delaware-Chippewa Office?

A. Yes.

Q. And did you have an automobile loan pending for a couple of years?

A. Yes.

Q. How much was the payment on the automobile loan?

A. I believe it was $137.50.

Q. And did they send you a separate bill for the automobile loan?

A. No, they didn't send me a separate one. They gave me a coupon so that each one when I made the payment I take out the coupon plus the check, and it would be the payment for the car.

Q. And at the same time you were making payments on the automobile loan would you have been making payments on other loans to the bank?

A. Yes, I did.

Q. Now, did there come a time, Mr. Robinson, when in November of 1969 you needed some money?

A. Yes.

Q. And did you go to Mr. Spitzmiller at that time?

A. Yes, I did.

Q. And do you recall, if you can, approximately how much you owed the M & T Trust Company at that time?

A. I believe it was around seventeen, eighteen thousand dollars
Q. And when you went to Mr. Spitzmiller what did you ask him for?
A. I was asking for some additional money if I could get it from him.
Q. Do you recall how much you asked for?
A. I believe it was around seventeen thousand.
Q. And did Mr. Spitzmiller indicate to you that you could have the money at that time?
A. I think that he said he has to look through my records.
Q. And did there come a time thereafter that in November he discussed the loan with you?
A. I believe he did, yes.
Q. And do you recall any part of that discussion?
A. He said that the best thing for me would be that he would try to get me a line of credit so I don't have to come each time to the bank, they would assign a certain amount of money to me and this would be much easier for me.
Q. Did you understand what a line of credit was?
A. Not quite.
Q. Did you ask him what it was?
A. Well I asked him what it was, and he said it means that you can go up to a certain amount of money and that's as far as you can go.

Q. Did he indicate at that time that the automobile loan was included in the thirty-five thousand dollars?

A. No, I don't think so.

Q. Did he ask you, if you can recall, whether or not you had a current financial statement with the bank?

A. I don't believe so. I don't think it was discussed a financial statement at that time.

Q. Did there ever come a time in November of 1969 when he asked you for a financial statement?

A. I don't believe so.

Q. You were sitting in the courtroom when Mr. Spitzmiller was testifying?

A. Yes.

Q. Over the last two days of hearings. Do you recall that he said something to the effect that he has asked for a financial statement in November of 1969?

A. He might have asked me.

Q. So far as you can remember could he have asked you for that financial statement?

A. He could have.

Q. Did he give you any forms, so far as you remember?

A. No, no, I don't think so.

Q. Did he indicate to you -- When was the first time that you

can recall -- Did there come a time when Mr. Spitzmiller advised you that you could have this so called thirty-five thousand dollar line of credit?

A. Yes, I believe it was at the end of 1969.

Q. At the end of 1969?

A. Yes.

Q. And did he indicate to you what had to be done in order to accomplish this?

A. I believe he indicated "You have to sign some papers.".

Q. Did you go into the bank in the latter part of 1969 to obtain some money?

A. Yes, I did.

Q. And how much money did you obtain at that time from the bank in December of 1969?

A. I don't think I got any money at that time in 1969, in December.

Q. Well, did you --

A. I think the money was obtained before 1969,

Q. Before December of 1969?

A. Yes, I think so.

Q. Mr. Robinson, I show you Exhibit 13E in evidence, and ask you if that is your signature on that note?

A. Yes, it is.

Q. And what is the date of that note?
A. December the 10th 1969.
Q. And do you recall whether or not on December 10th 1969 you had obtained any money from the bank?
A. No, I didn't.
Q. Mr. Robinson, I show you Exhibit 4 in evidence, and ask you if that is your signature on the note?
A. Yes, it is.
Q. And what is the date of that note?
A. December the 12th.
Q. And what is the amount of the note?
A. $35,000.
Q. Does that refresh your recollection as to whether you received any monies from the bank in December of 1969?
A. (No response)
Q. Do you understand what I mean?
A. Not quite. I think there was some other notes prior to that that was - I think this was all incorporated in the thirty-five.
Q. I am showing you now Petitioner Exhibit 13E and Petitioner Exhibit 4 both in evidence, and ask you whether or not you received some monies in December of 1969?
A. Yes, I did receive some money.

Q. Do you understand what I mean now?
A. Yes, I do.
Q. And the monies that you received, is that part of the $17,000 or all of the $17,000 that you referred to that you requested Mr. Spitzmiller to give you in November of 1969?
A. I believe so, yes.
Q. Now, at the time that you received the $17,000, would that have been on December 10th of 1969?
A. I t could have been on December the 10th, yes.
Q. Did you sign any papers with the bank other than the note at that time, so far as you recall?
A. So far as I recall, I don't think I signed any paper.
Q. Did you give a financial statement at that time?
A. No, I didn't. I don't think so. I believe I didn't.
Q. Do you recall whether Mr. Spitzmiller asked you anything about your accounts receiveable or anything in December of 1969, December 10th of 1969?
A. We talked about a few accounts, we talked about it but that's as far as it went.
Q. Did he tell you to come to the bank at a certain time to sign some documents?
A. Yes, I think he did.

Q. And how many days later were you supposed to come back?
A. I believe it was on December the 12th.
Q. I show you Petitioner Exhibits 6, 6A, and 6B and ask you if you would look through those documents and see if that is your signature on them?
A. Yes, that is. Yes, there is.
Q. Do you recall these documents now that you see them?
A. Yes. At that time when I was in the bank and when I signed the note for the $35,000 he gave me this paper.
Q. And did he ask you to sign them?
A. Yes, he did.
Q. Did he tell you anything about what they were?
A. I believe he told me that it was "formality of the bank that we have to have in our file".
Q. At anytime did he mention that the $35,000 you owed the bank would have to be paid in a year?
A. I imagine he gave me that letter -- He did mention it I believe it has to be for one year.
Q. That is what you believe now that it was for one year?
A. Right.
Q. Did you believe it then?
A. No, --
MR. GARDNER: I should have objected before.

I have to object.

THE COURT: Sustained to the use of the word "believe", form.

BY MR. SHELDON:

Q. Did you know, Mr. Robinson, on December 12th 1969 that the amount of money that you owed the bank in the sum of $35,000 had to be paid back by December of 1970?

A. I believe I did.

Q. Did Mr. Spitzmiller explain to you these things?

A. I don't think he explained it to me in details at all. He just gave me the paper and asked me to sign.

Q. Did you read over the papers before you signed them?

A. No. Just looked them through, glanced them through, and that's about all. Because I never questioned them in the past.

Q. Did you ever have to sign papers like this for the bank before?

A. No, I didn't. This is the first time.

Q. I show you Petitioner Exhibits 6C and 6D in evidence, and ask you to look through those and see if you ever signed that?

A. Yes, that's my signature.

Q. Do you recall ever signing any other agreements than these

that were dated in January of 1969 other than the ones that were dated in December of 1969?

A. This is the only one.

Q. Did you have to give some money to the bank on December 12th 1969?

A. I believe I gave them a check for $700.

Q. I show you Petitioner Exhibit 16 in evidence, and ask you if that is the check you gave to the bank on December 12th 1969?

A. That's correct.

Q. And would you say what the notation is there?

A. It's marked "Commercial Loan Fees".

Q. And is that your words or what Mr. Spitzmiller told you to put down?

A. I didn't put it on. That's not my writing.

Q. That is not your writing?

A. No, sir.

Q. Did you obtain $35,000 in cash on December 12th of 1969?

A. No, I didn't.

Q. Did you obtain any money from the bank on that day?

A. On December the 12th?

Q. Yes.

A. No, I didn't.

Q. Did you have any cash then when you walked out of the bank from the proceeds of that loan to purchase inventory?

A. I believe I did, yes.

Q. Well, how did you get it if you did not have it on December 12th, if they did not give you any money?

A. The money I had was prior to December the 12th.

Q. But there was no money given to you on December the 12th?

A. No, there was not.

Q. Did you pay the interest on this loan regularly after December 12th 1969?

A. Yes, I did.

Q. Did you go into the bank from time to time to pay those interest charges?

A. Yes, I did.

Q. Did you talk to Mr. Spitzmiller?

A. On occasion, yes.

Q. Were you quite friendly with Mr. Spitzmiller?

A. I would say yes, quite friendly.

Q. Had you given him any Christmas presents?

A. Yes, I did.

Q. What kind of Christmas present did you give him?

A. I gave him some hams.

Q. Would you have given him these hams at the bank or at his home?

A. At his home.

Q. And had you ever given Mr. Licata any Christmas presents?

A. Yes, I did.

Q. Why did you deliver the hams to Mr. Spitzmiller's home?

A. (No response)

Q. Had he told you to deliver them to the home rather than the bank?

A. He didn't ask me. I asked him his address at home. He gave it to me. I asked him if it was all right that I drop off a package for him, and he said it would be all right.

Q. So in a way would you say, Mr. Robinson, that you were fairly friendly with Mr. Spitzmiller?

A. I would think so, yes.

Q. Did there come a time in January of 1971 or December of 1970, when you had some discussions with Mr. Spitzmiller pertaining to your loan?

MR. GARDNER: I am confused on the time. I think you said December of 1971 or January of 1970.

MR. SHELDON: Did I?

THE COURT: I am not certain. You mean December of 1970 or January of 1971?

MR. SHELDON: 1971,yes. I better rephrase it.

BY MR. SHELDON:

Q. Did you have some conversations with Mr. Spitzmiller pertaining to this loan in December of 1970 or January of 1971?

A. In 1970 I believe we had some discussion.

Q. Do you recall the month?

A. I think it was December.

Q. Well, did Mr. Spitzmiller ask you about how you were doing from time to time?

A. Yes, he was asking the nature of business which I told him, that --

Q. Would he have asked you about anyone who owed you any money

A. Why, in the conversation we talked about it. I believe I mentioned a few names, some people owed me money.

Q. That would be from time to time?

A. Yes.

Q. Basically, Mr. Robinson, you deal with the same customers day in and day out, is that right?

A. That's correct.

Q. And --

THE COURT: Off the record.

(Off the record discussion was had.)

MR. SHELDON: Will you read the last question back, please.

(Whereupon, the Reporter then read back the following: "Q. Basically, Mr. Robinson, you deal with the same customers day in and day out, is that right? A. That's correct.")

BY MR. SHELDON:

Q. You heard the question, Mr. Robinson?

A. Yes. That's correct.

Q. You deal with the same customers?

A. Yes.

Q. And from time to time do these customers owe you money?

A. Yes, they do.

Q. And the money that they owe you is for the purchase of hams?

A. Yes.

Q. And would these be hams that you purchased from some other customer?

A. Yes.

Q. And this is not the hams that were sold from New York Commodities?

A. No.

Q. They could be the same hams though?
A. They could be the same ham, yes, but they are not the --
Q. Now, did you have accounts receiveable from time to time?
A. Yes, I did.
Q. I show you Exhibit 18A through K in evidence, and ask you if these invoices represent some or all of your sales from November 25th of 1969 through December 12th of 1969?
A. Yes, that's correct.
Q. And would you read off to the Court the names of the customers that are on those invoices?
A. Frank Wardynski, Joseph Malecki, Loblaws, F. C. Tripi Company, Twin Fair Distributors.
Q. Mr. Robinson, I show you Exhibit 19A through 19H in evidence and ask you if these are invoices or some or all of the invoices for sales made during the period from February 5, 1970 through July - I'm sorry - through August 3, 1970?
A. That's correct.
Q. And would you read outloud for the Court the names of customers on those invoices?
A. Twin Fair Distributors, Frank Wardynski, Stanley Kucharski, and Pasco Meat Products, and Hickman, Coward & Wattles.
Q. Now, referring to the first group of invoices that I showed you that were dated between the period of the latter part

of November the middle of December of 1969, would most of that money have been owed sometime in January of 1970?

A. Yes. I think some of them would be.

Q. And basically for a period of time these same customers would have a balance with you from time to time?

A. Yes, they did.

Q. And the balance would be up and over a thousand or more dollars on most of those customers, is that right?

A. That's correct.

Q. And some customers, did it reach balance of nine and ten thousand at times?

A. Yes, there were some customers.

Q. Now, in the case of these invoices, would the merchandise that you sold on these invoices be purchased from other customers?

A. Yes, it was.

Q. And did you use funds that you had borrowed to buy - to pay for the products that you had bought and then sold to these people?

A. Yes.

MR. GARDNER: Objection. There is no time indicated. Is he talking about 1965 or 1970?

THE COURT: Sustained.

BY MR. SHELDON:

Q. During the period of 1969, the latter part of 1969 would you have used funds borrowed from the Manufacturers and Traders Trust Company to purchase the products that you ultimately sold that is reflected on these invoices?

A. Yes, I did.

Q. You know what I mean?

A. I believe I do.

Q. Do you recall having a meeting with Mr. Spitzmiller sometime in early January 1971?

A. I believe we had a discussion, yes.

Q. Had you gone to the bank on that day?

A. Yes, I did.

Q. And had you gone to the bank for some business transaction or specifically to see Mr. Spitzmiller?

A. I believe at that time I went in to make a payment on the interest on the loan.

Q. And did Mr. Spitzmiller ask to see you?

A. Yes.

Q. Do you recall whether you had a conversation with him at that time?

A. Yes, I believe we had a few minutes we talked.

Q. And did you talk anything about your business?
A. I believe we discussed it, yes.
Q. And did you discuss anything about your customers?
A. I believe we talked about it, yes.
Q. Well, did he ask you your customers names?
A. Well, he had asked in the past.
Q. He had asked about your customers names?
A. In the past we talked about it.
Q. Did he mention the name of a customer to you?
A. He might have mentioned a name or two.
Q. Did he ask you if they owed you any money?
A. I don't think we discussed that --
Q. He basically asked you about whether you had your same customers that you usually had, right?
A. That's correct,yes.
Q. Did you have any accounts receiveable in January of 1971?
A. No, I didn't. I did have in 1970.
Q. So far as you can recall, Mr. Robinson, is the invoice which is Exhibit 19H in evidence dated August 3, 1970, the last invoice having to do with the sale of any of your products?
A. That's correct.
Q. Now, when I say the sale of your products I am not referri

to the sale of New York Commodities products that you obtained a commission on, I am talking about the sale of goods that you bought from some other place and sold to some other place?

A. That's correct.

Q. That would be the end--

A. That would be the end of my --

Q. And basically in 1970 would the exhibits 19A, B, C, D, E, F, G, and H be approximately all the sale that you had in 1970?

A. That's correct.

Q. Now, at the conclusion of your meeting with Mr. Spitzmiller did he say anything about any further meetings?

A. You're referring, Mr. Sheldon , to the last meeting I had with him when I was in the bank and made the payment?

Q. I'm sorry. You don't understand. It is my fault. At the time you talked to Mr. Spitzmiller on January 11th, you believe it was the 11th when you went in to make that payment on the loan, --

A. Yes.

Q. -- did he at that time indicate that he wanted to see you again?

A. I believe he did, yes.

Q. And did he indicate a time when he wanted to see you?

A. I believe he did mention a time, yes.

Q. And what was the time, do you recall?

A. I think it was ten o'clock in the morning.

Q. I'm sorry. On what day?

A. I don't remember the date.

Q. Would it have been a couple days afterwards?

A. I think so.

Q. And where was the meeting to take place?

A. I think he mentioned that he would like - first they asked us to come I think to his office.

Q. And that would be the Delaware-Chippewa Office?

A. Right. And then he asked -- And then he said when I came to that office he said he would like me to go over to see Mr. Sheldon at the --

Q. That is George Sheldon?

A. Yes, I believe so.

Q. And what office was that at?

A. I believe that was the Midtown Office.

Q. And had he told you to bring an attorney with you when he talked to you that day when you went in to make the payment on the loan a couple of days before this meeting with Mr. Sheldon?

A. No, he didn't.
Q. Did you bring an attorney with you?
A. Yes, I did.
Q. What was the attorney's name?
A. Mr. Pressman.
Q. Did you have financial problems at that time?
A. Yes, I did.
Q. And were a lot of creditors contacting you?
A. Yes.
Q. And asking for payments?
A. Yes.
Q. Was your only income at that time the commissioned sales from New York Commodities?
A. Yes.
Q. Did you understand what problems you were in so far as inability -- Did you understand that you could not pay your debts, you understand what I mean by debts, your bills?
A. I know there was extreme pressure and difficulties, I knew that, yes.
Q. When you met with Mr. Sheldon, George Sheldon, at the Midtown Office was Mr. Spitzmiller and Mr. Pressman with you?

A. Yes.

Q. And did Mr. Spitzmiller ask you anything in front of Mr. Sheldon, do you recall, or did Mr. Sheldon do most of the talking?

A. I think Mr. Sheldon did most of the talking.

Q. Did he ask you any questions that you can recall?

MR. GARDNER: Who is "he"?

MR. SHELDON: You are right.

BY MR. SHELDON:

Q. Did Mr. Sheldon ask you any questions that you can recall?

A. Not that I recall.

Q. Did he tell you that he had checked into some of your customers and found out that they did not owe you any money?

A. I believe that he did.

Q. Did he tell you that he knew who your customers were?

A. I think he mentioned a few names.

Q. Did he use the word "customers" or "accounts receiveable"?

A. I believe accounts receiveable.

Q. When you talked with Mr. Spitzmiller two days before, --

A. Yes.

Q. -- did he use the word "customers"?

A. I believe so. Because I talked to him in the past and

we threw in a few names like Hickman, Coward & Wattles, customers they do business with the bank too.

Q. Did Mr. Sheldon indicate to you that from the customers that he had checked, from the accounts receiveable that he had checked that you had no accounts receiveable?

A. I believe he said so, yes.

Q. Didn't he ask you on that day whether you owed other people money?

A. I believe he did, yes.

Q. Do you recall that you thereafter were referred to me?

A. Yes.

Q. Had you ever requested that I represent you before in any other matter?

A. (No response)

Q. Do you know what I mean?

A. No, I don't understand your question.

Q. Was I ever your lawyer on any other matter prior to this time?

A. No.

Q. And do you know how you were referred to me?

A. Yes, I do.

Q. How?

A. From Mr. Pressman.

Q. Did there come a time, Mr. Robinson, when we filed a petition of bankruptcy for you?

A. Yes.

Q. And did you come to Court on some day after we filed the petition, the papers?

A. I believe I did, yes.

Q. And was Referee McGuire on the bench at that time?

A. Yes, I think so.

Q. And do you recall that we had to come back on another occasion?

A. Yes.

Q. And do you recall whether Mr. Gardner was the attorney who asked you questions on that occasion?

A. I believe so, yes.

Q. Do you recall, Mr. Robinson, the proceedings on April 16, 1971 when Mr. Gardner asked you a multitude of questions - asked you many questions?

A. Yes, I do.

Q. You understand what I mean by "many"?

A. Yes,many questions. A few.

Q. And he asked you about these meetings with Mr. Spitzmiller and Mr. Sheldon in January of 1971?

A. I believe he did, yes.

Q. So far as you remember?

A. So far as I remember.

Q. Mr. Robinson, I am refering to page 57 of Petitioner Exhibit 1, line 1 through 5, I am going to give you two questions, really one that had been continued, and your answer, and ask you if you recall making that statement, "Q. I'm asking, Mr. Robinson, whether you told Mr. Spitzmiller on January 11th of this year -- A. Yes. Q. -- that you had accounts receiveable payable to you? A. No, I did not have anything.". When you said "anything" do you recall that answer at all?

A. I believe so.

Q. When you said "I did not have anything." you were referring to accounts receiveable, money people owed you?

A. Yes.

Q. And you did not have any accounts receiveable on that day, is that right?

A. In 1971?

Q. Yes.

A. No, I didn't.

Q. Did you have accounts receiveable in January of 1970?

A. Yes, I did.

Q. I refer you to page 59 of Exhibit 1, line 16, and the

answer appearing on line 19, "Q. And did you make that statement to him on that day? Did you tell Mr. Spitzmiller on January 11th that that account receiveable was owing? A. There was no accounts receiveable.", was that your statement at that time?

A. That's correct.

Q. And there were no accounts receiveable in January of 1971?

A. There was not.

Q. Did you list any accounts receiveable in your petition and schedule in bankruptcy and papers that you filed with the Bankruptcy Court?

A. No, I didn't.

Q. As a matter of fact, Mr. Robinson, the last time that you really had a number of accounts receiveable would have been at one time when a lot of people owed you money at one time?

A. Yes.

Q. Would that have been in January of 1970?

A. Yes, I would think so.

Q. And were those basically from the Christmas sales?

A. Yes.

Q. The prior Christmas sales of late 1969?

A. That's correct.

Q. As a matter of fact, Mr. Robinson, isn't it true that the sale of these goods which you purchased from one customer and sold to another customer was an incidental part of your livelihood?

A. That's correct.

Q. Do you understand what I mean by "incidental", a small part?

A. A small part, yes.

Q. Basically you were a commissioned salesman?

A. Yes.

Q. What was the reason why you would purchase the same goods that you had sold let's say as an example to Wardynski, why would you have sold goods from New York Commodities to Wardynski and then purchase them back from Wardynski and sell them to somebody else?

A. The reason I did it I accommodated a customer so I wouldn't lose out on a commission, and the merchandise going back that he couldn't see it, the size that he had, and I stepped in and tried to help out and remove the merchandise and sell it to somebody else.

Q. What was the approximate price of ham in December or the latter part of 1969?

A. Ninety-nine, eighty-five, something like that.

Q. And that is ninety-nine cents or eighty-five cents a pound?

A. Certain items were eighty-five and others were ninety-nine.

Q. What was your commission?

A. My commission was one cent a pound.

Q. I show you Petitioner Exhibit 18A in evidence, and ask you on an invoice in the amount of $3,276 representing net 3,600 pounds, how much money would you have made?

A. (No response)

Q. As a hypothetical, if those goods had been sold, purchased from New York Commodities?

A. Thirty-six dollars.

Q. So, in other words, Mr. Robinson, you would buy back from Wardynski as much as all of the product that you sold?

A. That's correct.

Q. Which could have then cost you $3,276 to save a commission of thirty-six dollars?

A. Sometimes, yes.

Q. And was there occasions when after buying this merchandise back that you had to see it for a lower price?

A. Yes, there was times.

Q. So it was your business understanding that to save a

commission of thirty-six dollars you were going to risk --

A. Sometimes I had to do it.

Q. And was that in order to save the customer for a sale the next time?

A. That's right.

Q. Did there sometimes come a time when you made some money on the resale?

A. Yes, there was a few times.

Q. Would you have made a lot of money or just a small amount?

A. Just a small amount.

Q. Do you really think, Mr. Robinson, that you had an understanding of this business that you were in?

A. I don't quite understand the question, Mr. Sheldon.

Q. Did you think it wise, Mr. Robinson, to invest the amount of money that you had to to buy back these products in order to save this minimal commission?

A. Sometimes it was wise to do it.

Q. And why was it wise?

A. Bwcause if I wouldn't do it the merchandise would have to go back to the original purchase and I would lose out on an account that way, and I didn't want them to know that the customer bought the merchandise and he's returning it back so in the future, you know, you might lose him out

as an account. So on many occasions I stepped in and tried to help out one guy and sold it to another guy. And some occasions I lost some money because of the change in the market and condition and I had to lose, and hopefully I was thinking that in the future I would have a chance to make it up.

Q. Mr. Robinson, do you know what a discharge of bankruptcy is?

A. Discharge?

Q. Yes.

A. No, I don't.

Q. If I told you, Mr. Robinson, if a discharge is granted you would be relieved of paying your obligations as indicated in the paper you have filed, would you ask the Court to grant such a discharge?

MR. GARDNER: I will object to this.

MR. SHELDON: I have no further questions.

Your Honor, if I may, I would just like to take a five minute recess to make a call to my office.

THE COURT: All right.

You may step down until after the recess, Mr. Robinson.

(Whereupon, a recess was then taken at 10:30 a.m.)

PROCEEDINGS: After recess, 10:35 a.m.

APPEARANCES: Same as before noted.

THE COURT: Mr. Robinson, would you take the stand again, please. You are still under oath, Mr. Robinson.

Off the record.

(Off the record discussion was had.)

J A C K R O B I N S O N, having been previously duly called and sworn as a witness, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. GARDNER:

Q. Mr. Robinson, you testified you were having financial difficulties by January of 1971, is that right?

A. That's correct.

Q. And when you went into the bank Mr. Spitzmiller had a conversation with you of some sort, do you remember that?

A. Yes, I do.

Q. And he asked you to come back shortly thereafter, and you brought an attorney with you, is that right?
A. That's correct.
Q. Why did you bring an attorney with you?
A. Well, at that time I was under extreme difficulties and I think it would be very wise to have somebody to represent me.
Q. And you were concerned, I assume, that Mr. Spitzmiller was asking about how things were going?
A. Yes, he was.
Q. And you indicated that he had mentioned the names of your accounts receiveable at that point?
A. No, I don't believe so.
Q. You don't believe so?
A. No. Talking about in the past some customers.
Q. Well, in my notes, Mr. Robinson, I note that you advised your attorney earlier this morning that in the conversation in January of 1971 Mr. Spitzmiller again mentioned names of your customers?
A. Yes, he mentioned names of customers, that's correct.
Q. And you referred to specific customers?
A. Right. In the past we talked about Hickman, Coward and Wattles, different names, how my business was, and so on, and so forth.

Q. And he continued to talk about specific customers this time too, did he not?
A. Yes, he did discuss it, yes.
Q. And how long did that conversation with Mr. Spitzmiller take?
A. I think it was very short, brief. About five minutes.
Q. About five minutes or six minutes?
A., Five or six minutes.
Q. And were you seated at a desk with him?
A. Yes.
Q. And did you observe him with a piece of paper and a pencil in his hand from time to time?
A. He usually has a pencil.
Q. And he was in a position where he, so far as you know, could have been writing something at that point?
A. Not to my knowledge. I didn't see that he was writing anything. He could have. But I don't think I seen anything.
Q. You don't know for sure?
A. That's correct.
Q. Now, you say that Mr. Sheldon never asked you any questions at the following conversation about whether you still had accounts receiveable?

A. How could I have accounts receiveable when I didn't have.
Q. Mr. Robinson, please. My question is did Mr. Sheldon ask you any questions about accounts receiveable?
A. (No response)
Q. I am asking whether you had -- I am not asking whether you had accounts receiveable. I am asking did Mr. Sheldon ask you any questions at the January 1971 conference?
A. I don't believe so.
Q. You believe not?
A. That's right.
Q. You heard Mr. Sheldon testify that he did ask you some questions?
A. Did he testify to that?
Q. You don't remember him saying that he did ask you questions
A. Not to my knowledge.
Q. You do remember him asking you did you owe money to any other creditors other than the M & T?
A. I believe at that time in his office he mentioned that he found out somebody that I owe money to.
Q. Do you remember him asking you questions for you to tell him whether you owed any money?
A. No, I don't remember that.
Q. Do you recall how Mr. Pressman reminded you that you also

owed a mortgage?

A. I think in the conversation when we talked there I think Mr. Sheldon said that there was a mortgage to the East Buffalo Credit Union, that he found it out, that he did some checking around.

Q. In other words, your testimony is that all the information that was talked about at these January meetings was information that the bank officers provided and you did not tell them anything one way or the other, is that right?

A. That's correct.

Q. And when Mr. Sheldon, Mr. George Sheldon referred to other debts he was actually providing the information, he did not ask you to tell him anything?

A. That's right.

Q. Did you say anything in the course of that conversation to Mr. Sheldon?

A. No.

Q. And Mr. Pressman?

A. No, I did not.

Q. You did not say a thing. Do you not recall that in fact Mr. Sheldon asked you about other creditors and you said that the only debt that you owed was to the Manufacturers and Traders Trust Company and then Mr. Pressman reminded

you that you also owed a mortgage and you agreed yes, you did, and then Mr. Sheldon said he had information that you also owed money to a Credit Union that you had not indicated. Do you not recall at that point Mr. Pressman said he thought maybe the conference should come to a close and he should take you to his office and have an opportunity to talk about those things?

A. I believe we had a conversation, yes, we talked about it, but --

Q. You do not recall that that conversation occurred generally along the lines that I just indicated?

A. I don't quite understand you.

Q. Isn't it a fact, Mr. Robinson, that the conversation went along the lines I have just stated where the bank was asking you questions, you were giving answers, and the bank was disagreeing with your answers, and at some point fairly soon Mr. Pressman said he wanted a chance to talk to you alone before you answered anymore questions?

A. While we were talking and Mr. Sheldon talked to me and he said I should not discuss anything at all. That's when he told me that I should go to his office.

Q. And you went back to his office and you had a conversation, and as a result of the conversation Mr. Pressman decided

not to represent you any longer, is that right?

A. That's correct.

Q. And as a matter of fact, the reason he did not want to represent you is because you --

MR. SHELDON: I am going to object, your Honor.

THE COURT: Sustained.

BY MR. GARDNER:

Q. You owed the bank a lot of money in January when you were going in to see Mr. Sheldon and Mr. Spitzmiller, did you not?

A. Yes.

Q. And you were not able to pay your bills at that time, were you?

A. That's correct.

Q. And you also knew at that time that you had given the bank some type of a lien or something regarding accounts receiveable, did you not?

A. I remember I signed papers but I didn't know what it contained.

Q. Well, you knew that these papers had something to do with your accounts receiveable?

A. So far as I remember Mr. Spitzmiller told me this is a matter of the bank, a legality that they have to have the

paper on file and would I be good enough and just sign it and everything is in order. I never questioned Mr. Spitzmiller in the past about anything.

Q. You see, Mr. Robinson, you are talking about something that occurred in December of 1969. I am talking about what you knew in January of 1971 over a year later, in January of 1971 you knew that you had signed this paper, is that right?

A. In 1971?

Q. Yes.

A. Yes, I knew that I signed papers but I didn't know exactly what they contained or to the effect.

Q. But you knew that the papers said something about your business affairs and that the bank had some power or other that you might not understand?

A. That's correct.

Q. And you were certainly not anxious for the bank to learn that you did not have any accounts receiveable at this point, were you?

A. When, in 1970?

Q. In January of 1971 it was in your best interest --

A. There was no accounts receiveable.

MR. SHELDON: I am going to object to the

question whether it was in his best interest.

THE COURT: Overruled.

BY MR. GARDNER:

Q. In January of 1971 you did not want the bank to know that you had no accounts receiveable, did you?

A. Well, I didn't have any accounts receiveable.

Q. You are not answering the question, Mr. Robinson.

A. What do you mean I didn't want them to know? I don't quite understand what you mean by that.

Q. I will try to explain it to you. You and I will agree for the moment that you in fact did not have any accounts receiveable, okay?

A. I didn't have any. There couldn't be any because there wasn't any.

Q. You did not have any accounts receiveable. I know that.

A. That's correct.

Q. You told me that before.

A. Right.

Q. The bank did not know that you did not have accounts receiveable though, did they?

A. The bank knew in the past in 1970, that I had a conversation with Mr. Spitzmiller, I mentioned a few customers that I

had outstanding owing. But it was not in 1971.

Q. In January of 1971 your testimony is you did not tell the bank that you had any accounts receiveable or that you had no accounts receiveable, either one?

A. That I did not have any, that's correct.

Q. You did not tell them anything?

A. That's correct.

Q. So the bank had no way of knowing from you whether or not you had accounts receiveable?

A. That's correct.

Q. Right. Now, in fact you did not want the bank to know that you did not have accounts receiveable?

A. What do you mean "in fact"? I don't quite understand what you mean "in fact". How could you say "in fact" when I didn't have it, so how could you say the bank didn't want to know -- I don't quite understand your question what you're trying to bring out here.

Q. Well, it is not for you to understand what I am trying to bring out. I will ask the question and you give me a factual answer. Now, will you just listen for a moment. In January 1971 did you want the bank to know that you did not have any accounts receiveable?

A. Did I want the bank to know?

Q. Yes. Did you want them to know?
A. How could I want them to know when I didn't have any.
MR. GARDNER: Your Honor, I am at the end of my rope. I ask for some kind of direction to the witness. I get an argument in response to every question I ask.
THE WITNESS: I don't quite understand.
BY MR. GARDNER:
Q. I want to know what your state of mind was at that time, Mr. Robinson, I don't want to know whether it is logical.
A. At that time I was in extreme severe financial difficulty.
Q. And you knew that would not help you, they might call your loan?
A. As a matter of fact, I discussed it with Mr. Spitzmiller and I told him I was under extreme difficulty and I was trying to work something out, and that was it.
Q. When did you tell him this?
A. In January 1971.
Q. The first meeting you had with him?
A. The first meeting and the second one and prior to that too.
Q. You told him this both at the first meeting and the second one, is that right?

A. That's right. He knew it.
Q. Not what he knew. But you told him?
A. That I had difficulties?
Q. Yes.
A. That's right, that I had financial difficulties.
Q. And the second time that you saw him was at the time Mr. George Sheldon was present, is that right?
A. That's right.
Q. What else did you tell him at that time?
A. That's all that I mentioned to him.
Q. That is all you mentioned.
THE COURT: Do you believe you are over that hurdle, Mr. Gardner, or do you want me to get into that?
MR. GARDNER: Well, no. Let's plow on if we can.
BY MR. GARDNER:
Q. Do you recall at the meeting with George Sheldon and Mr. Spitzmiller in January of this year that he asked you to prepare a current financial statement for the bank?
A. (No response)
Q. Do you remember that?
A. Yes, I believe so.

Q. Do you remember telling him that you would be glad to take the forms and return them but you could not fill them out at this moment?

A. I believe so.

Q. Do you remember Mr. Sheldon suggesting that he might call some of the accounts or customers of yours and verify with them what if any money they owed you, do you remember his suggesting that?

A. Could be. It could be that he mentioned it, I don't recall.

Q. You don't recall. You don't recall that he said that?

A. He could have said it.

Q. Okay.

A. He could have said it.

Q. And do you recall expressing your opinion to Mr. Sheldon that that would not be good for your business and that you wished he would not do that?

A. Would you repeat again?

Q. Do you remember telling Mr. Sheldon that you did not want him to call your customers?

A. I can't recall.

Q. You have to speak up, Mr. Robinson.

A. I can't recall that.

Q. Now, I show you Exhibits 18A through 18K, and these cover basically the period between November 25th 1969 and December 12th of 1969, is that right?

A. That's correct.

Q. And generally would this be the heavy period during any given year when you would be buying and selling hams with the Christmas season coming up?

A. Sometimes it would be, yes. It all depends how the condition of the market is.

Q. Well, hams would be a hot item around Christmas time, would they not?

A. Sometimes.

Q. You mean sometimes they are good at Christmas and sometimes they are not?

A. That's right. Sometimes depending on the prices. Sometimes the prices are too high and the market is not as good.

Q. Well, I show you Exhibits 19A through 19H and I notice here that we have invoices running basically from February of 1970 through August of 1970, is that right?

A. That's right.

Q. And is it fair to say that you had a few transactions in that period but they were spaced out over the period and they were not very numerous, in other words, this is all

you did during that time?

A. That's correct.

Q. And was this about typical for that time of year for this time of transaction?

A. Yes, I would say so.

Q. So that for example in the year 1969 although we don't have the invoices for the earlier part of 1969, the number of transactions that we see represented by Exhibit 19 would be about typical for what you have experienced in 1969?

A. (No response)

Q. Let me rephrase the question, Mr. Robinson. Looking at Exhibit 19 for the period between February and August of 1970, --

A. Right.

Q. -- would you have about the same number of deals during the period February to August of 1969, for example?

A. About the same?

Q. Yes.

A. No, I would say you had more in 1969.

Q. You were pointing to Exhibit 18. Exhibit 18 talks about the period from late November --

A. Yes.

Q. -- through December, that is the Christmas period, okay?

A. Right.

Q. Now, Exhibit 19 is from February to August. Are you saying that you had more deals between February and August in 1969 than you had between February and August of 1970, or were they about the same?

A. I think in 1969 was more than in 1970.

Q. How much more, do you have any idea?

A. (No response)

Q. Please don't look at the exhibit 18, Mr. Robinson. That is not a comparable period.

A. This Exhibit 19, right?

Q. Yes. That covers 1970 from February to August.

A. Right.

Q. Can you give us any comparison to what number of similar deals you would have had for the same period in the preceding year?

A. I would 1970 I had much less than 1969.

Q. All right. Let's approach it this way. In the spring of a given year, what would be the maximum you would ever reach in terms of outstanding accounts receiveable?

A. (No response)

Q. Would it be as much as ten thousand at a time?

A. Sometimes it might be.

Q. Sometimes it might get up that high?
A. Yes.
Q. It would not very often get over that in the spring or summer, would it?
A. It might. It all depends how conditions are in the market. It could be sometime.
Q. Tell me how much higher than ten thousand could it ever get in the spring or summer?
A. It could get up to eighteen thousand sometime.
Q. Would eighteen thousand be the absolute limit, that would be the highest it would ever get even under --
A. Sometimes. About eighteen thousand I would say.
Q. It might get as high as eighteen thousand but that would be an unusual situation, is that right?
A. Could have been, yes, I would think so.
Q. In any event, we can safely be assured it would never be over twenty thousand during the spring and summer of any given year, is that a fair statement?
A. Well, it could be, I would say yes.
Q. Could be what, please?
A. What you just said, twenty thousand, eighteen thousand.
Q. It might get as high as eighteen thousand or twenty thousand, but are we safe in assuming it never got over

twenty thousand or twenty-one thousand, something in that neighborhood, the very, very maximum?

A. I thinkwe could say that, yes.

Q. All right. Around Christmas time, however, you might have gone well over twenty thousand on occasion, depending on the market?

A. That's right.

Q. Isn't that right?

A. That's correct.

Q. Now, when Mr. George Sheldon and when Mr. Bob Spitzmiller testified that at the meeting with you in January of 1971 Mr. Sheldon asked you questions about your accounts and you said that you had certain accounts outstanding with certain balances owing, are you testifying that that testimony they gave is false, is that your statement?

A. Well, I'm saying it was never discussed anything about this.

Q. So when they say it was discussed they are wrong, is that right?

A. I would think so. Because there was no accounts receivable at all at that time. I did have in 1970.

Q. Why did you stop buying and selling hams around August of 1970, Mr.Robinson?

A. Because I was running into some financial difficulties at that time.

Q. You did not have the monies to carry it on any longer, is that right?

A. That's right. Business wasn't as good and sales were down and it affected a great deal of the business.

Q. And did you keep any records around December of 1969 of the money you got from the bank and how you used it?

A. (No response)

Q. I am talking about the seventeen thousand that you picked up around December 10th?

A. This was the money I used to buy merchandise.

Q. Who did you buy it from?

A. Well, there was a few guys. One was Pasco Meat Products.

Q. You have got to speak up, Mr. Robinson.

A. One was Pasco Meat Products, and the other was Wardynski.

Q. Do you have any records of those purchases?

A. I believe so.

Q. Did you bring them with you to Court?

MR. SHELDON: For the record, I think they are attached to the invoices of 1969.

MR. GARDNER: All right.

BY MR. GARDNER:

Q. Referring to Exhibit 18E and 18F, those exhibits show sales by you to Loblaws and to F. C. Tripi, is that right?

A. That's correct.

Q. Is there anything in those records that show when you purchased the hams that you were selling?

A. This was purchased from Niagara Frontier Service.

Q. Which one were you referring to? Exhibit 18E. Where does it tell you that, where do you get that information?

A. (No response)

Q. I just want to see the type of record we are talking about, Mr. Robinson. You have looked at Exhibit 18A and you referred to a Niagara Frontier Service slip. Is that a slip that would be used to show sales to you by Niagara Frontier Service?

A. That's right. Paid by check to me.

Q. For the record, that is serial number 6278 attached to the slip 18A. Okay. Let's leave it at that. Now, you did not know Mr. Spitzmiller before he took over the Delaware Office, did you?

A. No, I didn't.

Q. And you said you were friendly with him. You never were out with him socially, were you?

A. No, not with him.

Q. He was always cordial to you in the bank as he would be with any customer, I assume, is that correct?

MR. SHELDON: I am going to object as to how he would know whether he was cordial with any other customer other than himself.

THE COURT: Sustained.

BY MR. GARDNER:

Q. He was courteous and friendly to you whenever you were in the bank?

A. Yes.

Q. I believe you said you sent him a gift. Did he ever ask you for a gift?

A. Well, he said he tried it once and he like it very much. And around Christmas time I thought it would be nice gesture to drop off at his house a Christmas gift. And he gratefully accepted it, and he was very happy about it.

Q. And the point is this was your idea, he did not exchange Christmas gifts with you?

A. That's right.

Q. How many hams did you give him, by the way, Mr. Robinson?

A. I would say there was a few hams.
Q. A few?
A. A couple of hams.
Q. Five, or a couple?
A. One seven pounds, one five.
Q. Now, at the time, going back to the time when you borrowed the money, the additional money in December of 1969 how many times had you been in to see Mr. Spitzmiller about applying for that additional loan?
A. In 1969?
Q. Yes. You were in on December 12th when you signed all the papers, you were in on December 10th, and had you been in once before then to talk to him about getting some more money?
A. Yes. It was in I would say November.
Q. Was it once or could it have been twice?
A. It could have been twice.
Q. Now, the first time that he talked to you were you seated at his desk?
A. Yes, I believe so.
Q. And approximately how long did that conversation last, do you recall?
A. Four or five minutes maybe, six.

Q. And at that time did he talk to you at all or did he just say he would have to check your records?

A. I think he said that he's working on something to try to get me a line of credit, I believe that's what he was talking about at that time.

Q. But at some point he mentioned he would have to check back on your records about the loan, is that right?

A. I believe so, yes.

Q. Now, the next time you were in that you can recall, was this the time on December 10th when you actually got the money or was there another time in between?

A. I think there was another time in between because in December I only signed the papers, I don't think I got the money.

Q. Now, on one occasion you told Mr. Donald Sheldon that Mr. Spitzmiller did talk about a few accounts with you, do you remember that?

A. He talked in the past about different customers of mine and the nature of the business, and we threw in a few names like Hickman, Coward & Wattles and other accounts.

Q. You mentioned this at the time you were at the bank with your attorney Mr. Pressman on --

A. He talked about it at that time, and I was making a deposit

and there was a few sales that I made in November, December.
Q. Mr. Robinson, I am talking about December 10th 1969 when you came in specifically to get some money so you could buy some hams, not just to make a deposit?
A. Right.
Q. And you sat at the desk and you and Mr. Spitzmiller had a conversation before he actually give you the money, isn't that a fact, you do remember that?
A. Yes, I guess we talked.
Q. And you had to talk there a little while because Mr. Spitzmiller was going to give you a check,if possible?
A. No, he didn't give me checks.
Q. You wanted to get some money out of Mr. Spitzmiller on that day, did you not?
A. Right. The money was tranferred I believe to the account.
Q. And you had a conversation with Mr. Spitzmiller for a period of several minutes, did you not?
A. That's right.
Q. It might have been even a half an hour?
A. I don't think so. It wasn't that long. Four or five minutes.
Q. You walked in, sat down, and said you wanted the money right now, and he told you the papers were ready, and

within four minutes you left?

A. As a matter of fact, we talked to him about the money before that. When I came in to talk to him about it was when he made the transaction already. So it didn't take more than four or five minutes.

Q. When did you talk to him when you say you talked to him before that?

A. I think it was in November.

Q. That you were going to come in on December 10th and get the money?

A. That he was trying to work out something for me and he would have the money for me ready.

Q. Mr. Spitzmiller was not planning on giving you money on December 10th when you came in on that day, was he, because the papers were still in the hands of the attorney, do you remember that?

A. (No response)

Q. Do you remember that, do you remember that you asked him as a special favor to let you have it a couple of days early because you needed it right now?

A. I believe I talked to him, I told him I needed money. So far as the papers is concerned he said there's nothing to worry about it, I mean "you come on the 12th and you just sign it", and that was all.

Q. What is the maximum amount of money you have ever earned in a single year in the past three years?

A. I would say around twenty, twenty-two thousand gross.

Q. And you have been in the selling business ever since 1952, have you not?

A. That's right.

Q. And you know what net sales are, don't you?

A. Yes, net sales -- Yes, I believe I do.

Q. And you know what a mortgage is, you gave one to the Marine Trust Company, correct?

A. That's right.

Q. And at some point you gave a mortgage to the Credit Union, isn't that right?

A. Yes.

Q. And in your schedules that you filed in Bankruptcy Court you show that mortgage as having been given in March of 1969 to the East Buffalo Credit Union for seven thousand four hundred and ninety-three dollars, is that right?

A. That's correct.

Q. Now, referring to Exhibit 8 for identification, that is the financial statement which you gave in April of 1969 to the Trust Company, is it not?

A. That's right.

Q. And you looked that over and had it filled out carefully yourself, did you not?

A. I did it myself, yes.

Q. But you did not put anything in there about the East Buffalo Credit Union mortgage, did you?

A. Well, because in the past Mr. Licata when I mentioned it to him that I had outstanding loan with the East Buffalo Credit Union he said it's not necessary to fill it in.

Q. And this is the conversation you had with Mr. Licata back in 1965 or 1966?

A. That's correct.

Q. And as of April of 1969, by the way, Mr. Robinson, you were beginning to have financial difficulties even then, I assume, were you not?

A. In 1969? Not in 1969. Mr. Spitzmiller I believe said that my credit was all right up to --

Q. I am not talking about difficulties with the M & T. I am asking you if you were having difficulties with other creditors in April of 1969?

A. Not in April of 1969 I didn't have any difficulties.

THE COURT: Speak up.

THE WITNESS: I did not have any difficulties.

BY MR. GARDNER:

Q. Well, when you borrowed - correction -- When you gave this mortgage to the East Buffalo Credit Union in March of 1969 did you borrow money from them at that time or was that a long standing account with them?

A. That was a long standing account but this was additional money.

Q. The seven thousand four hundred and ninety-three dollars was additional money?

A. Well, it was all combined together which it came out to that amount, but I had a loan before and it increased it to that seven thousand four hundred ninety-three dollars.

Q. And what was the maximum amount of the loan that you had previously carried with East Buffalo?

A. Up to five thousand dollars.

Q. And how many years did you have that loan with the Credit Union?

A. I would say since 1965, '66.

Q. And isn't it a fact that in the spring of 1969 the credit union was expressing to you some concern about your account, isn't that a fact, and isn't that why they wanted a mortgage?

A. As a matter of fact, the way it happened here is that Mr. Licata himself at that time - he was in the bank prior

to Mr. Spitzmiller which they refused me the loan - he said it wouldn't be wrong if I went to some other source and tried to get some money.

Q. I see. So that in March of 1969 you are saying the Manufacturers and Traders Trust Company had refused you some money, and that is why you went and got some more money from the East Buffalo Credit Union?

A. I believe at that time Mr. Licata was changing branches with Mr. Spitzmiller. That's right.

Q. Now, looking at Exhibit 8 for identification, the item for net profit before taxes of thirty-five thousand two hundred dollars, that was greater than your income ever was in any given calendar year, was it not, in fact, you did not earn that much money in any year, did you?

A. Not thirty-five thousand.

Q. Maybe twenty thousand?

A. Over twenty thousand.

Q. Over twenty thousand?

A. Yes.

Q. Did you ever earn as much as even thirty thousand in a given year?

A. Close to it one year, yes.

Q. Do you know what year that was?

A. I think it was 1967, 1968.

Q. 1967, 1968?

A. I think so.

Q. Now, what monies did you owe to other creditors in March or April of 1969 other than the Manufacturers and Traders Trust Company, your first mortgage, and the East Buffalo Credit Union?

A. (No response)

Q. Who else did you owe money to at that time?

A. (no response)

Q. Did you owe any money to the Liberty National Bank and Trust Company at that point?

A. In 1969?

Q. Yes, early 1969?

A. I believe so, yes.

Q. How long had you been maintaining loan balances at the Liberty Bank,how many years have you been banking with them?

A. I would say about four years.

Q. About four years?

A. Yes.

Q. So you had been borrowing money from Liberty Bank for about four years, and you had sums owing to them from time to time, is that right?

A. Correct, yes.

Q. Do you know how much you would have owed them around March or April of 1969?

A. I don't remember offhand.

Q. Would it have been as much as five thousand dollars?

A. It could have been.

Q. It could have been that high?

A. It could have been.

Q. How about Marine Midland Bank, Western, did you have any borrowings from them during 1967, 1968 or 1969?

A. No, there wasn't any.

Q. When did you start borrowing money from Marine?

A. Marine was 1970, April 1970.

Q. How about the Hebrew Benevolent Loan Association, had you been borrowing money from them over the years?

A. No. It was only the one time in 1970.

Q. Did you borrow money from Hickman, Coward & Wattles?

A. No, I never borrowed from them.

Q. Over the years?

A. No.

Q. You had an obligation at some point to the First Warsawer Club Federal Credit Union, is that right?

A. Yes. I believe so.

Q. And was that something that was existing over the years?
A. No. It was in 1970 when I got the loan I believe in November, 1970.
Q. How about the Hebrew Benevolent Loan Association?
A. It was also in 1970.
Q. Now, you refer to a conversation with Mr. Licata in 1965 or 1966. What specifically was said by you and what was said by Mr. Licata about how the forms should be filled out, first of all, were you looking at the form as he was filling it out?
A. Well,he was sitting at my desk and he was filling it out himself, sure I was looking.
Q. And at some point you told him something about your other debts,and what is it you told him again?
A. We discussed that I had some with East Buffalo Credit Union, and he said, "You don't have to worry about that. You don't have to put that in there at all.".
Q. He said that?
A. Yes, he did.
Q. Didhe explain why?
A. No, he didn't explain. He said it was unnecessary.
Q. Did you keep a copy of that credit statement?
A. I believe I did.

Q. And did you bring it to Court with you on this hearing?

A. It was of 1965, 1966 --

MR. GARDNER: Just a minute.

Off the record.

(Off the record discussion was had.)

MR. GARDNER: Mark this Petitioner Exhibit, please.

(Whereupon, document bearing "Individual Financial Statement" bearing date of 11-25-65, was then marked Petitioner Exhibit No. 20 for identification.)

BY MR. GARDNER:

Q. Mr. Robinson, I show you Petitioner Exhibit 20, and ask you if that is the financial statement which you have referred to as having been made out by Mr. Licata?

A. That's correct.

Q. And are the pencil figures in Mr. Licata's handwriting?

A. Yes, sir.

Q. And the statement is made out as of November 25, 1965, is that right?

A. That's correct.
Q. Where did Mr. Licata get the information that went into this form?
A. We were talking about - discussing it, you know, --
Q. Well, you gave him the information, isn't that right?
A. Well, I didn't give it to him exactly. He said this would be all right the way to put it in. He prepared it himself.
Q. Well, I assume that you gave him some figures?
A. Well, we talked about it, yes, but the figures actually that --
Q. Did he pull the figures out of the air and put them there, or did you give him some figures?
A. I gave him some figures, and the rest --
Q. He just made it up?
A. He made it up, and he said this would be the best thing to make out.
Q. You are actually saying that some of these figures he just made up himself?
A. Well, we discussed it. We talked about it. And I told him about the nature of my business, and he said this is the way it should be filled out, the statement.
Q. Well now, for example, when it says "Good Accounts Receiveable $8,549.85", you gave him that figure, did you not?

A. Yes, that figure I gave him.
Q. And when it says "Notes Payable to Other Banks Secured", you gave him that figure four thousand dollars, did you not, you told him you owed some money to another bank, correct?
A. That's correct.
Q. And that is the last financial statement, however, you ever put down any money owing to anybody except Manufacturers and Traders Trust Company?
A. I think so.
Q. None of your future financial statements -- On none of your future financial statements did you note any other monies owing to another bank?
A. Correct.
Q. But Mr. Licata put down you owing money to another bank, another creditor?
A. Yes. But he said in the future when I make out my own not to put in East Buffalo Credit Union, it isn't necessary or any other banks.
Q. You did not say this before.
A. When Mr. Licata was filling out the financial statement and he indicated to me I had some money outstanding with the East Buffalo Credit Union and he said it's not necessar

to put it in.

Q. How much money did you owe the East Buffalo Credit Unionn at that time?

A. A few thousand dollars I believe.

Q. A few thousand dollars?

A. A couple thousand. Something like that.

Q. How much life insurance did you carry in 1969, Mr. Robinson?

A. Life insurance?

Q. Yes.

A. Say about - about thirty thousand dollars.

Q. And you know the difference between the face amount of life insurance and a cash surrender value, don't you?

A. I believe I do.

Q. And when you put cash surrender value of $8,275.00 on Exhibit 8. is that the same thirty thousand dollar policy face amount that we are talking about?

A. Yes.

Q. How long did you have that insurance?

A. Since 1955.

Q. Now, on your direct examination by Mr. Donald Sheldon you indicated that in December 1969 when you were in to sign all the papers you did not read them in detail, but you looked through them, do you remember?

A. Well, what he did actually, he had it all on his desk prepared when I got in there, and he gave it to me and he said, "Just sign it. It's a formality of the bank.", and I never questioned in the past and I never had to sign any paper except this last time in 1969, and he said, "This is just routine of the bank. Just sign them.", and he gave me the note, and I took off. It was about four or five minutes I was there, that's about all. He didn't read it to me and I didn't bother reading it. He just handed it over to me and there was a few copies to sign, which I did.

Q. You had no conversation with him at all. Did you not ask Mr. Spitzmiller what these were for and what --

A. As a matter of fact, he told me a few days before I was there he was trying to get that all finished up for me and when I get in the bank he says, "Just a routine formality. Just sign it. We keep it in our files.", and that was all.

MR. GARDNER: Okay.

You may ask.

REDIRECT EXAMINATION BY MR. SHELDON:

Q. Have you ever prepared a financial statement, Mr. Robinson, by yourself prior to the time that Mr. Licata came to your

home on a Sunday to help you with this one?

A. No.

Q. I show you Petitioner Exhibit 20 for identification, and as you where it refers to four thousand dollars "Notes Payable To Other Banks Secured", who did you owe the money to, do you recall?

A. (No response)

Q., If you recall?

A. I don't recall exactly.

Q. Do you understand what "secured" means?

A. It means they have a mortgage.

MR. SHELDON: I am going to offer this into evidence, Petitioner's Exhibit 20.

THE COURT: Any objection?

MR. GARDNER: Oh no, no. No objection.

THE COURT: Received.

(Whereupon, document bearing "Individual Financial Statement", bearing date of 11-25-65, previously marked Petitioner Exhibit No. 20 for identification was then marked and received in evidence.)

BY MR. SHELDON:

Q. Mr. Robinson, when Petitioner Exhibit 20 in evidence was being prepared by Mr. Licata, did you bring out any of your invoices, if you recall, at that time?

A. No.

Q. Were any figures that were presented on that financial statement that were furnished by you given off the top of your head?

A. (No response)

Q. Do you know what I mean by "off the top of your head", in other words, they were given by you without looking into any records?

A. I believe so.

Q. Had you owed Liberty Bank on a loan, not on Master Charge, any money prior to November of 1969?

A. Prior to 1969?

Q. Yes.

A. If I owed Liberty?

Q. Yes.

A. I believe I did.

Q. And had you paid up certain obligations to them?

A. Yes.

Q. And did you owe Liberty any money in April of 1969 other

than the Master Charge?

A. That's right.

Q. You did not or you did?

A. In April when, 19 --

Q. 1969?

A. I believe I did.

Q. Well, didn't you obtain a loan from Liberty in November of 1969?

A. That's right.

Q. And had you had a balance with Liberty Bank at the time you obtained that loan?

A. Yes, I did.

Q. And was it a large balance or a small balance?

A. I would say it was a sufficient amount..

Q. Now, Mr. Gardner asked you questions with respect to sales that you made in the spring of 1970 as compared to some sales that might have been made in the spring of 1969. Is it fair to say, Mr. Robinson, that this outside line type business, the buying of the products to save your commission was minimized in the year 1970 for lack of funds?

A. Yes, I would say so.

Q. And so that the sales you would have had in 1970 would have

been decreased substantially, is that correct?

A. That's correct.

Q. You did not borrow any money from Manufacturers and Traders Trust Company or Liberty in 1970, did you?

A. No, I didn't.

Q. The only basic loan that you had in 1970 was from Marine, is that correct?

A. That's correct.

Q. That is in addition to the small loan from the Hebrew Benevolent Loan Association at the end of 1970?

A. That's correct.

Q. Now, in the conversation that you had with Mr. Sheldon, George Sheldon, on January 13th of 1971 in his office at the Midtown Office at the bank, didn't Mr. Sheldon tell you at that time that he had called your customers and found that they did not owe you any money?

A. Yes, he did.

MR. SHELDON: I have no further questions.

MR. GARDNER: No questions, your Honor.

THE COURT: That is all, Mr. Robinson. You may step down.

MR. SHELDON: I have no further witnesses.

MR. GARDNER: I have no rebuttal, your Honor.

THE COURT: All right.

Gentlemen, I will reserve decision in the matter.

How long would you like to file your brief, Mr. Gardner, assuming you will have the record in two weeks?

MR. GARDNER: Can we go off the record, your Honor?

THE COURT: Yes.

Off the record.

(Off the record discussion was had.)

* * * *

In the Matter

of

JACK ROBINSON in Bankruptcy

Bankrupt No. BK-71-376

I, EDNA J. PACZYNSKI, do hereby certify that I attended at the time and place above mentioned and took a stenographic record of the proceedings and testimony in the above-entitled claim, and the foregoing is a true and correct copy of the same and the whole thereof, according to the best of my ability.

Edna J. Paczynski
Shorthand Reporter

Dated: January 5, 1972.

DECISION AND ORDER OF REFEREE MCGUIRE
January, 3, 1972

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

JACK ROBINSON NO. BK 71-376

Bankrupt

Hodgson, Russ, Andrews, Woods & Goodyear,
William H. Gardner, Esq., of Counsel
Buffalo, New York
Attorneys for Creditor-Petitioner

Chirlin and Sheldon,
Donald P. Sheldon, Esq., of Counsel
Buffalo, New York
Attorneys for Bankrupt-Respondent

McGuire, Referee

On March 3, 1971, the bankrupt filed a voluntary petition in bankruptcy. Scheduled among his creditors, for a sum in excess of $35,000.00, was the Manufacturers and Traders Trust Company. Pursuant to § 14(b)(1) of the Act (11 U.S.C. § 32(b)(1)), June 8, 1971, was fixed as the last day for the filing of objections to discharge and/or applications for determinations of the dischargeability of debts.

The Manufacturers and Traders Trust Company on June 8, 1971, filed objections to the bankrupt's discharge and an application for a determination of the dischargeability of its debt. The objections to discharge alleged the commission

of acts specified in subsections 14(c)(1) and 14(c)(3) of the Act (11 U.S.C. §§ 32(c)(1) and 32(c)(3)); that is, the giving of false testimony at a hearing held before this Court on April 16, 1971, and the giving, while engaged in business, of a materially false financial statement in writing. The dischargeability application alleges false and fraudulent representations in the procurement of a loan which are claimed to bring the Manufacturers and Traders' indebtedness within the ambit of § 17(a)(2) (11 U.S.C. § 35(a)(2)).

Hearings were held before this Court on December 2, 21, and 23, 1971. Extensions of time for the filing of briefs, requested by each party, substantially delayed submission. The final brief in this matter was filed on September 29, 1972.

I

A threshold issue is the bankrupt's claim that the petitioner's objections and application were not timely. While the records of this Court indicate that the objections and application were filed within the time specified in the Court's notice and order of March 22, 1971, the $10.00 filing fee for the objections and the application were not collected until subsequent to that date. In this Court's judgment,

however, the failure to tender a fee upon the filing of papers may not be held against a party when those fees subsequently are paid upon demand.[1]

II

The Court, therefore, passes to the petitioner's first specification of objection to the bankrupt's discharge. Section 14 of the Act provides in pertinent part:

> "c. The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under title 18, United States Code, section 152 . . ."

Section 152 provides in pertinent part:

> " * * *
> Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; . . .
> * * *
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

The petitioner's specification under § 14(c)(1) sets forth a series of answers by the bankrupt to questions

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1. See Manual of Office Procedures For Bankruptcy Clerks, P.2 (Federal Judicial Center 1972).

propounded to him at a hearing before this Court on April 16, 1971. Those answers, designated "a" through "y" are alleged to be knowingly false and fraudulent. At the hearing of December 21, 1971, this Court preliminarily found reasonable cause to believe that the responses designated "i", "j", "k", "l", "m", "o", "p", "q", "r", "s", "t" and "u" were false and fraudulent. Excepting "m", that answer being equivocal, the Court now adheres to its preliminary view.

Truthful answers to these queries, of course, would have provided a foundation for the petitioner's seeking a determination of the dischargeability of its claim and were most material for that purpose. The petitioner having established by a fair preponderance of the evidence reasonable cause to believe that the bankrupt knowingly and fraudulently gave false testimony in this proceeding, the burden of ultimate persuasion to the contrary rests upon the bankrupt. Bankruptcy Act § 14(c); 11 U.S.C. § 32(c); see also, In re Slocum, 22 F.2d 282 (2nd Cir. 1927); In re Melniker Hammock Mfg. Co., 45 F.2d 703 (2nd Cir. 1930). The bankrupt's disclaimers not being credited, the petitioner's first specification of objection is sustained.

III

The petitioner's second specification of objection rests upon § 14(c)(3) of the Act which provides:

> "c. The court shall grant the discharge unless satisfied that the bankrupt has . . . (3) while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business money or property on credit or as an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation; . . ."

A review of the record satisfied the Court that the petitioner has established all but one essential element of an act within the subsection.

The evidence reveals that the bankrupt in fact was merely a commission salesman. Notwithstanding his representations to the bank that he was engaged in business, such employment in this Court's judgment does not make him a sole proprietor within the meaning of subsection 14(c)(3). See 1A Collier on Bankruptcy ¶14.36 (14th ed.). The bankrupt's income was derived from his personal services rather than from any business carried on by him. His status is more akin to a wage earner than a sole proprietor under the Act (putting aside consideration of the monetary limitation inherent in the bankruptcy definition of that term). See 1 Collier on Bankruptcy ¶1.32 (14th ed.).

IV

In view of the foregoing, the Court will not consider or pass upon the § 17 application of the petitioner.

The petitioner's first specification of objection having been sustained, the bankrupt's discharge shall be and hereby is denied.

So Ordered.

Dated: January 3, 1972

Referee in Bankruptcy

DECISION AND ORDER OF REFEREE MCGUIRE
March 6, 1973

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

JACK ROBINSON NO. BK 71-37(

Bankrupt

Hodgson, Russ, Andrews, Woods & Goodyear,
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Buffalo, New York
Attorneys for Bankrupt-Respondent

McGuire, Referee

On application of the bankrupt dated January 5, 1973, this Court agreed to reconsider its decision dated January 3, 1973. The earlier order sustained objections under § 14(c)(1) of the Act (11 U.S.C. § 32(c)(1)); the findings generally being that the bankrupt had made false oath in the proceeding.

Reconsideration was sought based upon this Court's declaration (at page 4 of the Decision and Order dated January 3, 1973) that "[t]ruthful answers to these queries, of course, would have provided a foundation for the petitioner's seeking a determination of the dischargeability of its claim

and were most material for that purpose". Reconsideration was granted upon the claim that this declaration revealed a misjudgment of the facts and law.

The bankrupt's oral misrepresentations to the bank, which were denied by the bankrupt in the hearing before this Court, did postdate the loans by the bank to the bankrupt. In the context of claims of fraud in the procurement of those earlier loans, however, those later misrepresentations may have had a bearing on the issue of the bankrupt's intent in his earlier dealings (i.e., to demonstrate absence of mistake, etc.). Consequently, while it may be argued that the Court overstated the evidentiary value of truthful responses, the Court is satisfied that truthful responses were not immaterial or irrelevant from the point of view of the bank or its interests.

While the bankrupt's false testimony may have been the height of foolishness and that foolishness, at least in part, may have been the unfortunate result of terrifying experiences in his earlier life, he is not thereby excused from conduct forbidden by the Act. For the reasons outlined in this Court's decision dated January 3, 1973, as amplified by this decision, the objections to the bankrupt's discharge

are sustained and his discharge denied.

So Ordered.

Dated: March 6, 1973

Referee in Bankruptcy

DECISION AND ORDER OF JUDGE CURTIN
January 15, 1974

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

NO. BK 71-376

JACK ROBINSON

Bankrupt

APPEARANCES: Hodgson, Russ, Andrews, Woods & Goodyear (William H. Gardner, Esq., of Counsel) Buffalo, New York, for Creditor-Petitioner.

Chirlin & Sheldon (Donald P. Sheldon, Esq., of Counsel), Buffalo, New York, for Bankrupt-Respondent.

This case is before the court on the bankrupt's petition to review an order of the Referee in Bankruptcy denying the bankrupt's discharge.

Upon consideration of the record, this court finds the Referee's findings of fact and decision supported by the evidence and therefore affirms. See In re Melnick, 360 F.2d 918, 920 (2d Cir. 1966).

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: January 15, 1974

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